

Judicial Internships/ Externships	Yes
Post-graduate Judicial Law Clerk	No

Specialized Work Experience

Recommenders

Davis, Kristi
Judge.Kristi.Davis@tncourts.gov
865-594-5246
Rosenbaum, Briana
brianarosenbaum@utk.edu
865-974-0687
Harrington, Tammy
tamharrington@hotmail.com
8652735550

This applicant has certified that all data entered in this profile and any application documents are true and correct.

EMMA FOWLER

esavage6@vols.utk.edu
(865) 466-6395

9515 Honeydew Lane
Knoxville, TN 37931

June 12, 2023

The Honorable Jamar K. Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am a rising third-year law student at the University of Tennessee College of Law, and I write to apply for a clerkship in your chambers in the Eastern District of Virginia beginning in August 2024.

I aspire to this position because I see a judicial clerkship as the best way to continue my legal education. My experiences in law school, both inside and outside of the classroom, have allowed me to hone my legal research and writing skills. Perhaps most importantly, these experiences have shown me just how much I *enjoy* legal research and writing. I can think of no better way for me to use and continue to improve upon these skills than through a judicial clerkship. I have built my time in law school around gaining the skills necessary to be a successful clerk. I have interned for the Tennessee Court of Appeals, worked as an editor for the *Tennessee Law Review* and *Transactions: The Tennessee Journal of Business Law*, won a prestigious law school competition, became a member of the National Moot Court Team, and externed for a Knox County Criminal Court judge. Additionally, I earned the top grade in each of my legal writing courses, and the law school classes I have enjoyed the most have been the ones that challenged me to think deeply about legal issues and use those writing skills effectively. I am most excited about a federal clerkship because it will allow me to take the aspects I have most enjoyed about law school and pursue them in a full-time capacity. I am confident that my passion and skill in legal research and writing will make me an excellent clerk.

My resume, unofficial transcript, writing sample, and three recommendation letters are submitted with this application. My recommenders are The Honorable Kristi M. Davis, Tennessee Court of Appeals; The Honorable Tammy Harrington, Blount County Circuit Court; and Professor Briana Rosenbaum, Associate Professor of Law at the University of Tennessee College of Law.

Please let me know if I can provide you with additional information. Thank you very much for considering my application.

Respectfully,
Emma Fowler
Candidate for Juris Doctor 2024

EMMA FOWLER

esavage6@vols.utk.edu
(865) 466-6395

9515 Honeydew Lane
Knoxville, TN 37931

EDUCATION

The University of Tennessee College of Law

Knoxville, Tennessee

Candidate for Juris Doctor, May 2024

GPA: 3.6/4.3 Class Rank: Top 15% (through Fall 2022; Spring 2023 TBA)

Honors: National Moot Court Team; Advocates' Prize Competition: Powell Prize for Best Oralist (2022), Best Team (2022); *Tennessee Law Review*: executive editor (2023-24), staff editor (2022-23); *Transactions: The Tennessee Journal of Business Law*: executive editor (2023-24), staff editor (2022-23); Dean's List (Highest Honors, fall 2021, High Honors spring 2022, and Honors fall 2022); CALI Excellence for the Future Awards in Legal Process I and Legal Process II

Activities: Advocates' Prize Vice Chair, Moot Court Executive Board; Christian Legal Society: Vice President (2023-24), Treasurer, (2022-23); Law Women; UT Pro Bono

Publications: Emma Savage Fowler, Case Note, *Name, Image, and Likeness in the Wake of NCAA v. Alston*, 90.2 Tenn. L. Rev. (forthcoming 2023).

The University of Tennessee

Knoxville, Tennessee

Bachelor of Arts, *summa cum laude*, December 2020

GPA: 4.0/4.0 Major: Political Science Minors: Business Administration and History

Honors: Top Political Science Graduate from the College of Arts and Sciences; Dean's List; Phi Beta Kappa; Political Science Summer in London.

Activities: Baker Ambassadors; Vols Vote; Calvary Baptist Church Student Organization.

EXPERIENCE

Office of the Tennessee Attorney General, Environmental Division

Nashville, Tennessee

Summer Law Clerk, May 2023 - June 2023

Drafting a complaint; drafting language for a settlement agreement; conducting legal research; drafting memoranda

Knox County Criminal Court, Division III

Knoxville, Tennessee

Judicial Extern, January 2023 - April 2023

Drafted orders and memoranda of law; conducted legal research; observed court proceedings

The University of Tennessee College of Law

Knoxville, Tennessee

Research Assistant, July 2022 - August 2022

Conducted legal and historical research on the topic of convict leasing in Tennessee in the late nineteenth century

Tennessee Court of Appeals, The Honorable Kristi M. Davis

Knoxville, Tennessee

Judicial Intern, July 2022 - August 2022; July 2023 - August 2023

Drafted law and analysis portion of opinion; prepared bench brief; conducted legal research; observed oral arguments

Egerton, McAfee, Armistead & Davis, P.C.

Knoxville, Tennessee

Summer Law Clerk, May 2022 - June 2022

Prepared documents for business formations; completed compensation study; conducted legal research drafted memoranda; attended hearings

McKinney & Tillman, P.C.

Knoxville, Tennessee

Office Assistant, January 2020 - July 2021

Conducted legal research using Westlaw; drafted deeds transferring properties into trusts and pleadings to be submitted to Chancery Court; created new client appointments and fielded questions from current clients; trained a new office assistant for the firm

Emma Fowler

esavage6@vols.utk.edu
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9515 Honeydew Lane
Knoxville, TN 37931

UNOFFICIAL TRANSCRIPT OF GRADES

This unofficial transcript may be verified by contacting the UT College of Law Student Records Office at (865) 974-6790.

First-Year Grades

Fall Semester 2021

<u>Class</u>	<u>Hours</u>	<u>Grade</u>
Civil Procedure I – Exper.	3	3.8
Contracts I	3	3.3
Legal Process I	3	3.6
Torts I	3	3.5
Criminal Law	3	3.7
Lawyering & Profess.	1	S
Semester	16	3.6/4.3
Cumulative	16	3.6/4.3
Class Rank: 4/124 (tied with eight other students)		

Spring Semester 2022

<u>Class</u>	<u>Hours</u>	<u>Grade</u>
Civil Procedure II	3	2.8
Contracts II	3	4.0
Legal Process II	3	3.5
Torts II	2	3.5
Property	4	3.9
Transactional Lab	1	S
Semester	16	3.6/4.3
Cumulative	32	3.6/4.3
Class Rank: 7/124 (tied with ten other students)		

Second-Year Grades

Fall Semester 2022

<u>Class</u>	<u>Hours</u>	<u>Grade</u>
Professional Responsibility	3	3.3
Evidence	4	3.3
Trial Practice	3	4.1
Contract Drafting	2	3.9
Fundamental Concepts of		
Income Taxation	3	3.4
Tennessee Law Review	1	S
Semester	16	3.6/4.3
Cumulative	48	3.6/4.3
Class Rank: 13/126 (tied with twelve other students)		

Spring Semester 2023

<u>Class</u>	<u>Hours</u>	<u>Grade</u>
Constitutional Law	4	4.0
Investigatory Criminal		
Procedure	3	3.7
Civil Rights Actions	3	3.8
Judicial Externship	4	S
Tennessee Law Review	1	S
Transactions: The Tennessee		
Journal of Business Law	1	S
Semester	16	3.9/4.3
Cumulative	64	3.6/4.3
Class Rank: TBA		

Emma Fowler

Third-Year Grades

Fall Semester 2023

<u>Class</u>	<u>Hours</u>	<u>Grade</u>
Business Associations	3	TBA
Conflict of Laws	3	TBA
Federal Courts	3	TBA
Reexamining the Constitution	3	TBA
Tennessee Law Review	1	TBA
Transactions: The Tennessee		
Journal of Business Law	1	TBA
Semester	15	TBA
Cumulative	79	TBA
Class Rank: TBA		

June 07, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

It is my pleasure to recommend Emma Fowler for a judicial clerkship with your chambers. Emma clerked for me during the summer of 2022, and she will be returning to my chambers for part of the upcoming summer. As you can discern from her resume, Emma is exceptionally bright, and she has experienced tremendous success, both in law school and during her undergraduate studies. Her academic success is a testament to her natural abilities and just plain hard work. What you cannot discern from her resume is her maturity, sharpness, and wonderful personality. Emma is very quick to understand the issues presented in each case, and her research was always spot-on. I enjoyed discussing the issues with her, and she displayed a maturity that is not typical of a first or second-year law student. Emma is, of course, an excellent writer, which is probably the most valuable skill a judicial clerk can have. Last summer, we felt comfortable enough with Emma's ability that we tasked her with preparing a preliminary draft of an opinion, and I am pleased to say that it was outstanding.

In sum, I have no hesitation recommending Emma for a judicial clerkship. If you wish to discuss Emma's credentials, I am more than happy to speak with you. Please feel free to contact me directly in my chambers at (865) 594-5246.

Sincerely,

/s/ Kristi M. Davis

Kristi M. Davis

Kristi Davis - Judge.Kristi.Davis@tncourts.gov - 865-594-5246

June 5, 2023

Your Honor,

I write in support of Emma Fowler's application for a clerkship in your chambers. I have had the great pleasure of teaching Emma during her second semester of civil procedure and as the faculty supervisor for her Spring 2023 Judicial Externship. Through my observations of her, I have come to know Emma as bright, hard-working, and goal driven. I think very highly of her work ethic and professionalism and have observed her diligent efforts to better herself as a writer and a lawyer. I saw these exact qualities in the very best lawyers that worked with me in practice, and I see a wonderful future in practice for Emma. She is among the top students in her class, and I hope you hire her.

The first reason I recommend Emma for a clerkship is her high analytical ability and superior grasp of the law. Emma showed a sophisticated understanding of the legal issues throughout Civil Procedure II and again in the Judicial Externship Program. She is able to answer all types of questions in class, from high theory to precise doctrine. Emma takes learning and her work seriously. As you can see from her transcript, she has earned grades at the top of her class for almost all of her courses. But (I am somewhat chagrined to say), she earned her lowest grade—a 2.8—in my class. You will also find on her transcript that this grade is an outlier. I can say with confidence that this grade reflects neither her work in class nor her understanding of the material. Emma has a sharp understanding of the law and legal analysis, but these skills can sometimes get overshadowed in the timed, test-taking environment. She received top scores on the multiple-choice portion of the final exam and on her mid-semester quizzes. This shows a deep understanding of the law and the ability to spot issues, skills which are also reflected in her in-class work. She can focus on the important legal issues and synthesize the law into understandable legal categories. Most importantly, it is clear to me that Emma is not the kind of person to ignore such grades, or simply accept them. Instead, she sets goals and tackles them with a determined, and thoughtful heart. During her second year, Emma actively sought out numerous opportunities to grow as a writer. She is on the Tennessee Law Review, has successfully obtained internship/externship positions with two judges, and participated in extracurricular activities that involve writing and analytical thinking.

My experiences with Emma as a supervisor in the Judicial Externship Program reinforced my impressions of her from Civil Procedure. Last semester, I placed Emma as an extern in the Chambers of the Honorable G. Scott Green of the Knox County Criminal Court after she expressed an interest in learning about the criminal justice process. This externship was a huge success for both Emma and Judge Green, based in large part on Emma's eagerness to learn, professionalism, and intellectual ability. Right away, Emma sought out research projects and other substantive work. Her skill in completing these first assignments led to many more. She routinely conducted complex research, wrote legal memoranda, and drafted orders for the judge. This is higher than the usual level of responsibility given to interns; a responsibility that she clearly earned. Judge Green reported that her work exceeds his expectations, and noted favorably her initiative, eagerness to learn, and professionalism.

Finally, I recommend Emma because she is a kind, respectful, and professional individual, who is dedicated to her learning community. Perhaps most importantly for a clerkship, she is an intelligent and independent thinker. I've personally observed her take constructive criticism very well, asking insightful follow-up questions, and always with an eye toward improving her work. Indeed, I think it's a testament to her professionalism and maturity that she asked me—the professor who gave her her worst grade in law school—to write this letter of recommendation. I am so very glad she did, so I can sing her praises to you.

Prior to teaching, I spent several years in corporate litigation practice. Emma is exactly the type of individual that I would want working for me. It has been a pleasure having Emma as a student, and I hope that you will have the opportunity to get to know her as well. If you would like additional information about Ms. Fowler, please telephone me at (865) 974-0687 or email me at brianarosenbaum@utk.edu.

Sincerely,



Briana Rosenbaum

Associate Professor, University of Tennessee College of Law

June 07, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

Please consider this correspondence as my formal recommendation on behalf of Emma Fowler. Ms. Fowler is an excellent law student, as well as a committed and talented individual.

In the fall of 2022, I served as an adjunct professor at the University of Tennessee College of Law. I have taught Trial Practice for several years, a subject that I personally believe provides a tremendous opportunity for experience and growth. Ms. Fowler was one of my students. Ms. Fowler quickly distinguished herself as a hard worker and class leader.

As a former career prosecutor and now as a circuit court judge, I have had the opportunity to work with lawyers in a courtroom setting on a regular basis. Ms. Fowler's professionalism and presentation rivaled that of experienced trial attorneys. Ms. Fowler was extremely detail oriented and conscientious of deadlines. Ms. Fowler possesses the skill and preparation to be successful in any legal situation.

Ms. Fowler demonstrated skill as a public speaker. She was able to communicate effectively and credibly. The time, effort, and commitment she gave to her work was outstanding. Ms. Fowler was always extremely prepared. She exhibited confidence in her presentation, yet remained relatable and credible.

Additionally, Ms. Fowler demonstrated a commitment to the law. She made sure she had a working knowledge of the Rules of Evidence. It was important to Ms. Fowler to understand the practical implications of the Rules.

In closing, I would like to say that it was a privilege for me to get to know Ms. Fowler. She will truly be an asset to the legal profession. I would give her my highest recommendation for any position.

If you have any questions, please do not hesitate to call me.

Sincerely,

Tammy Harrington
Circuit Court Judge

Tammy Harrington - tamharrington@hotmail.com - 8652735550

Emma Fowler Writing Sample

esavage6@vols.utk.edu
(865) 466-6395

9515 Honeydew Lane
Knoxville, TN 37931

Please find below excerpts from my brief for the College of Law's Advocates' Prize competition. I initially drafted the Statement of the Case section of this writing sample; I then worked with my Advocates' Prize competition partner to make minor edits. The Law and Argument section is entirely my own work.

STATEMENT OF THE CASE

Edward Munson has been in solitary confinement within the Administrative Segregation Unit of the Hawkins State Penitentiary for thirty-five years. R. at 3. In 1987, at twenty years old, the State of Hawkins convicted Mr. Munson of first-degree murder for the killing of Chrissy Cunningham and sentenced him to death. *Id.* However, the Hawkins Supreme Court overturned his conviction in light of the prosecution's failure to disclose exculpatory evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). R. at 3, 26. While awaiting a new trial, Mr. Munson remained in solitary confinement without any review of the justifications to keep him there. R. at 3. In 1993, Mr. Munson was convicted again and sentenced to death. *Id.* Due to improper jury instructions on the aggravating circumstance of the murder being "especially heinous and cruel," the Thirteenth Circuit again overturned the death sentence. *Id.* Mr. Munson remained in solitary confinement while the State sought certiorari following the Thirteenth Circuit's decision, again without review. *Id.* Mr. Munson was sentenced to death for the final time in 2007 and remains in solitary confinement in the Administrative Segregation Unit. *Id.*

Hawkins State Penitentiary contains minimum- and medium-security units, as well as the Administrative Segregation Unit. R. at 6. According to the State of Hawkins' annual budget for 2020–2021, the Administrative Segregation Unit has the highest cost per inmate on average, at roughly \$47,856 per year per inmate. *Id.* The medium-security unit and minimum-security units cost roughly \$39,540 per year per inmate and \$35,627 per year per inmate, respectively.

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Mr. Munson was automatically placed in the Administrative Segregation Unit based on his status as a death row inmate. R. at 5, 12–14. The penitentiary is subject to Regulation HCR220.02, which governs inmates' security classifications to determine their appropriate housing conditions and corresponding privileges. *Id.* at 13. The Regulation creates a "Security Classification Instrument" to assign inmates to a housing unit, which "analyzes a number of factors that are given a unique weight and processed by an algorithm that produces a security level for an offender." *Id.* Generally, the warden may override these classifications with approval by the Hawkins Department of Corrections Central Office. *Id.* However, inmates who received a death sentence, like Mr. Munson, are not subject to the Security Classification Instrument and are automatically assigned to the Administrative Segregation Unit when they arrive at the penitentiary. R. at 5, 13. Inmate assignment to this unit is not subject to Warden Override. R. at 13.

Mr. Munson has been in solitary confinement in the Hawkins State Penitentiary's Administrative Segregation Unit since 1987. R. at 3–4. For twenty-three hours per day, Mr. Munson remains isolated in his cell, which "is roughly the size of a single standard-size parking space." R. at 3–4, 11. During the one hour Mr. Munson can leave his cell during the weekdays, he may exercise, shower, make short phone calls, or have private mental health visits. R. at 27. On weekends, he may exercise, shower, or engage in no-contact visitation with pre-approved family members or a religious leader. *Id.* And while he can request books from the library he may only use pens while monitored by a guard, due to his deteriorating mental health. R. at 21, 27.

During the entirety of his thirty-five year incarceration, Mr. Munson has not received a single contact visit. R. at 4. Even his regular physical and mental evaluations "are conducted through the door of his cell within earshot of other inmates and prison employees." *Id.* Mr. Munson's mental health has declined during his solitary confinement; he has experienced a variety

Emma Fowler Writing Sample

of mental health crises, including “extreme depression . . . suicidal ideations and self-mutilation, insomnia, panic attacks, paranoid episodes, and auditory hallucinations.” *Id.* Despite documentation of this decline and despite Mr. Munson’s lack of disciplinary infractions or violations of prison rules, prison officials have not evaluated him for possible removal from solitary confinement. R. at 4, 6, 16–17. Mr. Munson remains in solitary confinement at this time. R. at 3.

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LAW AND ARGUMENT

Mr. Munson properly stated a claim for relief under both the Fourteenth and Eighth Amendments of the United States Constitution. Mr. Munson has properly stated a claim that his assignment to an administrative segregation (solitary confinement) unit in a state prison, following his death sentence, violates the due process clause of the Fourteenth Amendment. Further, Mr. Munson has properly stated a claim that the conditions and length of his confinement in an administrative segregation (solitary confinement) unit of the prison, rise to cruel and unusual punishment under the Eighth Amendment. Therefore, the ruling of the Appellate Court should be affirmed.

II. THE APPELLATE COURT CORRECTLY HELD THAT MR. MUNSON PROPERLY STATED A CLAIM THAT THE CONDITIONS OF HIS CONFINEMENT ARE INHUMANE AND CONSTITUTE CRUEL AND UNUSUAL PUNISHMENT UNDER THE EIGHTH AMENDMENT.

A. Applicable Law

The Eighth Amendment states, “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. Const. amend. VIII. This Court incorporated the Eighth Amendment against the states in 1962 in *Robinson v. California*, 370 U.S. 660, 667 (1962) (holding that a California statute which made it a criminal offense for a person to be “addicted to the use of narcotics” was “an infliction of cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments.”). When challenging the conditions of confinement, to make a *prima facie* case, “a plaintiff must show both ‘(1) a serious deprivation of a basic human need; and (2) deliberate indifference to prison conditions on the part of prison officials.’” *Strickler v. Waters*, 989 F.2d 1375, 1379 (1993) (quoting *Williams v. Griffin*, 952 F.2d 820, 824 (4th Cir.

Emma Fowler Writing Sample

1991)). The first standard is evaluated objectively, while the second standard is evaluated subjectively. *Wilson v. Seiter*, 501 U.S. 294, 298 (1991). Finally, “[w]hether an inmate’s conditions of confinement amount to ‘cruel and unusual punishment’ must be measured against ‘the evolving standards of decency that mark the progress of a maturing society.’” *Porter v. Clarke*, 923 F.3d 348, 355 (2019) (quoting *Estelle v. Gamble*, 429 U.S. 97, 202 (1976)).

B. The appellate court correctly held that Mr. Munson properly stated a claim that the conditions of his confinement are sufficiently serious to pose a substantial risk of significant harm.

The first requirement that must be satisfied in order to state a claim that conditions of confinement violate the Eighth Amendment is the objective component, that the deprivation is “sufficiently serious.” *Wilson*, 501 U.S. at 298. “To be ‘sufficiently serious,’ the deprivation must be ‘extreme’—meaning that it poses a ‘serious or significant physical or emotional injury resulting from the challenged conditions,’ or ‘a substantial risk of serious harm resulting from . . . exposure to the challenged conditions.’” *Porter*, 923 F.3d at 355 (quoting *Scinto v. Stansberry*, 841 F.3d 219, 225 (4th Cir. 2016)). If the claim is based on a failure by the prison official to prevent harm, “the inmate must show that he is incarcerated under conditions posing a substantial risk of serious harm.” *Farmer v. Brennan*, 511 U.S. 825, 834 (1994) (citing *Helling v. McKinney*, 509 U.S. 25, 35 (1993)). The harm may either be present or future to warrant Eighth Amendment protection. *Helling*, 509 U.S. at 33 (“It would be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them.”). Finally, this objective component “is contextual and responsive to ‘contemporary standards of decency.’” *Hudson v. McMillan*, 503 U.S. 1, 2 (1992) (quoting *Estelle v. Gamble*, 429 U.S. 97, 103 (1976)).

Emma Fowler Writing Sample

When addressing this objective component, courts have acknowledged that placing inmates in solitary confinement can result in a serious decline in both mental and physical health. For example, in *Palakovic v. Wetzel*, the Third Circuit evaluated an Eighth Amendment claim brought by the family of an inmate who committed suicide after repeated placements in solitary confinement. 854 F.3d 209, 215 (3d Cir. 2017). The court acknowledged “the robust body of legal and scientific authority recognizing the devastating mental health consequences caused by long-term isolation in solitary confinement . . . including anxiety, panic, paranoia, depression, post-traumatic stress disorder, psychosis, and even a disintegration of the basic sense of self identity.” *Id.* at 225. The court further noted that the harm may be physical, as well. *Id.* at 226 (“Physical harm can also result. Studies have documented high rates of suicide and self-mutilation amongst inmates who have been subjected to solitary confinement.”).

Mr. Munson has experienced sufficiently serious deprivation of a basic human need during his time in the administrative segregation unit of Hawkins State Penitentiary, arising to the level of sufficiently stating a claim of an Eighth Amendment violation. RT 3–4; Yang Claire Yang et al., Social Relationships and Physiological Determinants of Longevity Across the Human Life Span, Proceedings of the National Academy of Sciences of the United States of America, <https://doi.org/10.1073/pnas.1511085112> (“Full social participation is such a fundamental human need that research since the 1900s has found the lack of social connections increases the odds of death by at least 50%.”). Mr. Munson has been incarcerated in the administrative segregation unit for thirty-five years and has not received a single contact visit since his incarceration began. RT 3–4. Mr. Munson may only leave his cell for one hour each day, when he can either “exercise, shower, or engage in brief, no-contact visitation with pre-approved family members or religious leaders.” RT 4. Even Mr. Munson’s medical examinations “are conducted through the door of his

Emma Fowler Writing Sample

cell within earshot of other inmates and prison employees.” *Id.* This lack of contact over his thirty-five year incarceration has led Mr. Munson to suffer a serious decline in his mental health, experiencing symptoms such as “extreme depression, including suicidal ideations and self-mutilation, insomnia, panic attacks, paranoid episodes, and auditory hallucinations.” *Id.* This harm suffered by Mr. Munson, and the potential for future harm, rises to the level of a sufficiently serious deprivation of the basic human need for social contact.

The Appellate Court correctly recognized that this objective component had been met in its ruling. RT 45. The court stated, “[T]his deterioration in his mental health over the past many years may not have occurred but for his solitary confinement.” *Id.* In its ruling, the court noted the case of *Porter v. Clarke*, involving conditions of confinement similar to those Mr. Munson now endures. The conditions impressed upon those inmates included the same extended periods of isolation Mr. Munson experiences. RT 3–4; 923 F.3d at 357 (“[P]laintiffs spent, for years, between 23 and 24 hours a day ‘alone, in a small . . . cell’ with ‘no access to congregate religious, educational, or social programming.’”). The Fourth Circuit held in *Porter* that the conditions of confinement imposed on death row inmates in a Virginia State prison arose to the level of “sufficiently serious.” 923 F.3d 348, 361(2019) (“[T]he challenged conditions of confinement on Virginia’s death row created a ‘substantial risk’ of serious psychological and emotional harm.”). Likewise, the conditions of confinement endured by Mr. Munson are, objectively, sufficiently serious to state a claim for relief under the Eighth Amendment.

In *Hudson v. McMillan*, the Supreme Court stated that the objective component of an Eighth Amendment claim “is contextual and responsive to ‘contemporary standards of decency.’” 503 U.S. 1, 2 (1992) (quoting *Estelle v. Gamble*, 429 U.S. 97, 103 (1976)). Scientific research demonstrates that solitary confinement does cause psychological trauma and can result in physical

Emma Fowler Writing Sample

harm. *See, e.g., Williams v. Sec’y Penn. Dep’t of Corr.*, 848 F.3d 549, 566–69 (3d Cir. 2017) (discussing scientific research on the effects of solitary confinement). Contemporary standards of decency must reject the grave threat that continued solitary confinement poses to inmate well-being. *Id.* at 568; *see also Incumaa v. Stirling*, 791 F.3d 516, 534 (4th Cir. 2015) (“Prolonged solitary confinement exacts a heavy psychological toll . . .”). Conditions of confinement such as those Mr. Munson is subjected to are a sufficiently serious deprivation of a basic human need that warrants Eighth Amendment protections.

C. The appellate court correctly held that Mr. Munson properly stated a claim that prison officials showed deliberate indifference to a substantial risk of significant harm.

The second requirement that must be satisfied in order to state a claim that conditions of confinement violate the Eighth Amendment is the subjective component: “Did the officials act with a sufficiently culpable state of mind?” *Wilson v. Seiter*, 501 U.S. 294, 298 (1991). The state of mind “is one of ‘deliberate indifference’ to inmate health or safety.” *Farmer v. Brennan*, 511 U.S. 825, 835 (1970) (citations omitted). To demonstrate deliberate indifference, “an Eighth Amendment claimant need not show that a prison official acted or failed to act believing that harm actually would befall an inmate; it is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm.” *Id.* at 842 (citations omitted). A prison official has a duty to ensure “reasonable safety” under the Eighth Amendment, meaning that an official could lack liability where they knew of the risk of harm and responded reasonably to it. *Id.* at 844 (citations omitted). This subjective component is a question of fact that may be demonstrated “from circumstantial evidence . . . and a fact finder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious.” *Id.* at 842. Further, this component

Emma Fowler Writing Sample

“‘should be determined in light of the prison authorities’ current attitudes and conduct.’” *Id.* at 845 (citing *Helling v. McKinney*, 509 U.S. 25, 36 (1993)). Finally, it must be determined whether prison officials “‘had a legitimate penological purpose’ behind their conduct.” *Porter v. Pennsylvania Dep’t of Corr.*, 974 F.3d 431, 446 (2020) (first citing *Ricks v. Shover*, 891 F.3d 468, 475 (3d Cir. 2018); then citing *Wood v. Beauclair*, 692 F.3d 1041, 1050 (9th Cir. 2021)).

In *Porter v. Pennsylvania Department of Corrections*, the Third Circuit held that “thirty-three years of solitary confinement may violate the Eighth Amendment.” 974 F.3d 431, 435 (3d Cir. 2020). When evaluating the subjective component of the Eighth Amendment, the court used both acknowledgments by defendants of the “risks of prolonged solitary confinement,” as well as the wider body of research on the effects of solitary confinement in its analysis. *Id.* at 445–46 (“[T]he substantial risks of prolonged solitary confinement are ‘obvious,’ ‘longstanding, pervasive, well-documented, [and] expressly noted by prison officials in the past.’”). The court also noted that “punishments without penological justification” are prohibited by the Eighth Amendment. *Id.* at 446 (first citing *Ricks v. Shover*, 891 F.3d 468, 475 (3d Cir. 2018); then citing *Wood v. Beauclair*, 692 F.3d 1041, 1050 (9th Cir. 2012)). In *Porter*, the defendants argued that the legitimate penological purpose behind keeping a death row inmate in solitary confinement was that death row inmates had “nothing left to lose.” *Id.* (inner quotations omitted). The court stated that there was no evidence presented about the specific risk the inmate posed and that the inmate did not have any disciplinary instances on his record during his thirty-three year incarceration. *Id.* at 447. These factors led the court to conclude that a reasonable jury could find that the subjective component of the Eighth Amendment claim had been met. *Id.*

The prison officials of Hawkins State Penitentiary have shown a deliberate indifference to the substantial risk of significant harm imposed on Mr. Munson by virtue of his confinement in

Emma Fowler Writing Sample

the Administrative Segregation Unit. The officials “are and have been made aware of the deterioration of [Mr. Munson’s] mental and physical health as evidenced by reports made by and to Defendants and their agents.” RT 6. Defendants have admitted that some evidence of Mr. Munson’s deteriorating mental and physical health “is contained in his prison medical and mental health records.” RT 17. Despite this knowledge, the officials have shown deliberate indifference to Mr. Munson’s “substantial risk of harm through their refusal to assess, evaluate, and reconsider the location and conditions of his confinement.” RT 9.

The prison officials claim that they are not “required to have any legitimate penological purpose under the provisions of the Department of Corrections Standard Operation Procedures that govern [their] conduct.” RT 19. However, as stated above, “[t]he Eighth Amendment prohibits punishments without penological justification.” *Porter v. Pennsylvania Dep’t of Corr.*, 947 F.3d 431, 446 (3d Cir. 2020). Further, the prison officials can boast no “legitimate penological purpose” behind Mr. Munson’s conditions of confinement. During his confinement in the administrative segregation unit, Mr. Munson has neither disciplinary infractions nor citations for violations of prison rules or regulations on his record. RT 4, 16. Mr. Munson is regarded by prison officials as a “model inmate.” RT 4, 16. Further, the cost per year per inmate housed in the administrative unit is \$8,316 more than housing an inmate in the medium-security unit and \$12,229 more than housing an inmate in the minimum-security unit. RT 6. Thus, the cost burden on the penitentiary would not be increased if Mr. Munson was removed from the administrative segregation unit. Mr. Munson is in this administrative segregation unit by virtue of his status as a death row inmate, not for any legitimate penological purpose.

The Appellate Court correctly recognized that Mr. Munson properly stated a claim that the prison officials were deliberately indifferent to a substantial risk to him. In its ruling, the Court

Emma Fowler Writing Sample

relied on the case of *Farmer v. Brennan* which stands for the proposition that a prison official may be found liable where there is an obvious risk to which the official failed to respond reasonably. 511 U.S. 825, 842, 844 (1970). Prison officials knew that Mr. Munson posed a potential risk to himself and have taken some steps to prevent that risk, including preventing Mr. Munson from using pens unsupervised and giving him mood stabilizers twice daily. RT 27–28. However, these responses are unreasonable in the face of the grave risk that Mr. Munson’s conditions of confinement impose on him. *Williams v. Sec’y Penn. Dep’t of Corr.*, 848 F.3d 549, 568 (3d Cir. 2017). Prison officials are aware of the decline in mental health but refuse to reevaluate his confinement in the administrative segregation unit. RT 9, 17, 27–28. This refusal constitutes a deliberate indifference to the substantial risk of harm to Mr. Munson’s health in violation of Eighth Amendment protections.

Applicant Details

First Name	Natalie											
Last Name	Friedberg											
Citizenship Status	U. S. Citizen											
Email Address	nfriedberg@berkeley.edu											
Address	<table><tr><th>Address</th></tr><tr><td>Street</td></tr><tr><td>2430 DWIGHT WAY, APT 217</td></tr><tr><td>City</td></tr><tr><td>Berkeley</td></tr><tr><td>State/Territory</td></tr><tr><td>California</td></tr><tr><td>Zip</td></tr><tr><td>94704</td></tr><tr><td>Country</td></tr><tr><td>United States</td></tr></table>	Address	Street	2430 DWIGHT WAY, APT 217	City	Berkeley	State/Territory	California	Zip	94704	Country	United States
Address												
Street												
2430 DWIGHT WAY, APT 217												
City												
Berkeley												
State/Territory												
California												
Zip												
94704												
Country												
United States												
Contact Phone Number	6466600459											

Applicant Education

BA/BS From	University of Chicago
Date of BA/BS	June 2017
JD/LLB From	University of California, Berkeley School of Law
	https://www.law.berkeley.edu/careers/
Date of JD/LLB	May 8, 2024
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	Ecology Law Quarterly
Moot Court Experience	No

Bar Admission**Prior Judicial Experience**

Judicial Internships/ Externships	No
--------------------------------------	-----------

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

Gruen, Darryl
darryl.gruen@cpuc.ca.gov
415-703-1973
Jacobs, Sharon
sharon.jacobs@berkeley.edu
Reding, Ann
areding@law.berkeley.edu
5106421831

This applicant has certified that all data entered in this profile and any application documents are true and correct.

NATALIE FRIEDBERG

2430 Dwight Way #217, Berkeley, CA 94704 | (646) 660-0459 | nfriedberg@berkeley.edu

June 12, 2023

The Honorable Jamar K. Walker
United States District Court
Eastern District of Virginia
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker,

I am a rising third-year student at the University of California, Berkeley School of Law writing to apply for a clerkship in your chambers for the 2024-2025 term. As an aspiring environmental lawyer interested in public sector work, this would be an excellent opportunity for me to develop skills valuable for a career as a litigator or attorney advisor.

Throughout my academic and professional career, I have demonstrated strong research and writing skills which would equip me to be an effective clerk. Working as a nonprofit consultant and manager, I had to learn quickly and communicate clearly to write grant applications and develop strategic plans for clients. I have continued to apply these skills in the classroom, finishing my second year of law school in the top ten percent of the class.

I have experience with a wide variety of topics and styles of legal writing, including a memorandum outlining arguments for ratepayer advocates in utility proceedings, an analysis of the merits of an administrative appeal on a trade secret decision, and a notice of intent to sue under CERCLA. As a clerk, I would approach each assignment with the same meticulousness, organization, and commitment to quality that I have applied in all my projects to date.

You will find enclosed my resume, transcripts, writing sample, and letters of recommendation from Professor Sharon Jacobs, Professor Anne Reding, and Darryl Gruen. Please do not hesitate to contact me at nfriedberg@berkeley.edu with any further questions or requests for additional information. Thank you for your consideration, and I look forward to hearing from you soon.

Sincerely,



Natalie Friedberg
Berkeley L. Student

NATALIE FRIEDBERG

2430 Dwight Way #217 | Berkeley, CA 94704 | (646) 660 0459 | nfriedberg@berkeley.edu

EDUCATION

University of California, Berkeley School of Law, Berkeley, CA

J.D. Candidate, Class of 2024 (Top 15% of 1L Class; Top 10% of 2L Class)

Honors: Jurisprudence Award for Highest Grade in Negotiations; Prosser Award for Second Highest Grade in Civil Procedure; Prosser Award for Second Highest Grade in Administrative Law

Activities: Articles Editor & Symposium Director, *Ecology Law Quarterly*
Student Advocate & Leader, *Food Justice Project*
Tutor, *Legal Research and Writing Program*
Research Assistant for Professor Sharon Jacobs

University of Chicago, Chicago, IL

B.A. with Honors in History, June 2017

Honors: Nominated for Best Thesis in International History

Activities: Editor-in-Chief of *Grey City Magazine*; News Editor & Reporter for *The Chicago Maroon*

EXPERIENCE

Department of the Interior, Office of the Solicitor, Washington, DC

Summer 2023

Division of Land Resources Law Clerk

Anticipated duties include conducting research and writing legal memoranda to assist staff attorneys.

Environmental Law Clinic, Berkeley, CA

Spring 2023

Student Attorney

Researched technical documents and agency guidance to draft a detailed notice of intent to sue under CERCLA for a community advocacy nonprofit. Met with clients and issue experts; drafted a memorandum on procedural requirements for citizen suit litigation.

California Public Utilities Commission, San Francisco, CA

Summer 2022

Legal Division Intern

Drafted legal memoranda to assist ratepayer advocates in administrative hearings and conducted research for ongoing litigation. Projects included writing comments on a federal transmission rulemaking, developing arguments to promote affordability in water utility proceedings, and reviewing a petition for administrative appeal.

Asia Initiatives, New York, NY

2017 — 2018; 2019 — 2020

Project Coordinator

Managed a team of five associates to develop project proposals and communications materials for a women's empowerment and environmental nonprofit. Wrote grant applications that won the organization over \$50,000. Organized fundraising events and coordinated with local partners to write impact reports for donors.

International Innovation Corps, New Delhi, India

2018 — 2019

Project Associate

Served five clients for a social impact consulting firm. Projects included creating a communications strategy for an education data company and developing corporate social responsibility recommendations for a publicly traded company.

ADDITIONAL INFORMATION

Spent four months on an AmeriCorps conservation crew building trails and restoring habitats in the Southeast; worked on organic farms in Montana and upstate New York. Interests include backpacking and reading novels.

Berkeley Law

University of California

Office of the Registrar

Natalie Friedberg
Student ID: 3036489041
Admit Term: 2021 Fall

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Page 1 of 2

Academic Program History
Major: Law (JD)

Cumulative Totals 31.0 31.0

Awards

Prosser Prize 2021 Fall: Civil Procedure
Jurisprudence Award 2022 Fall: Negotiations
Prosser Prize 2023 Spr: Administrative Law

2021 Fall					
Course		Description	Units	Law Units	Grade
LAW	200F	Civil Procedure	5.0	5.0	HH
		Catherine Fisk			
LAW	202.1A	Legal Research and Writing	3.0	3.0	CR
		Ann Reding			
LAW	202F	Contracts	4.0	4.0	H
		Reza Dibadj			
LAW	230	Criminal Law	4.0	4.0	P
		Orin Kerr			
Term Totals			Units	Law Units	
			16.0	16.0	
Cumulative Totals			16.0	16.0	

2022 Spring					
Course		Description	Units	Law Units	Grade
LAW	201	Torts	4.0	4.0	H
		Kenneth Bamberger			
LAW	202.1B	Written and Oral Advocacy	2.0	2.0	H
Units Count Toward Experiential Requirement					
		Ann Reding			
LAW	203	Property	4.0	4.0	HH
		Molly Van Houweling			
LAW	220.6	Constitutional Law	4.0	4.0	H
Fulfills Constitutional Law Requirement					
		Erwin Chemerinsky			
LAW	279.9	Space Law	1.0	1.0	CR
Units Count Toward Experiential Requirement					
		Brian Israel			
Term Totals			Units	Law Units	
			15.0	15.0	

2022 Fall					
Course		Description	Units	Law Units	Grade
LAW	241	Evidence	4.0	4.0	HH
		Andrea Roth			
LAW	245	Negotiations	3.0	3.0	HH
Units Count Toward Experiential Requirement					
		Gregory Genske			
LAW	270.6	Energy Law & Policy	3.0	3.0	HH
		Sharon Jacobs			
LAW	271	Environmental Law & Policy	4.0	4.0	H
		Robert Infelise			
Term Totals			Units	Law Units	
			14.0	14.0	
Cumulative Totals			45.0	45.0	

2023 Spring					
Course		Description	Units	Law Units	Grade
LAW	223	Administrative Law	4.0	4.0	HH
		Sharon Jacobs			
LAW	264.1	Ocean & Coastal Law	3.0	3.0	P
		Holly Doremus			
LAW	291A	Environ Law Cl Sem	2.0	2.0	CR
		Claudia Polsky			
LAW	295.5E	Environmental Law Clinic	4.0	4.0	CR
Fulfills Writing Requirement					
		Claudia Polsky			
		Nazune Menka			
		Sabrina Ashjian			
		Steve Castleman			
		Antonette Cordero			
LAW	297	Self-Tutorial Sem	2.0	2.0	CR
		Sharon Jacobs			
Term Totals			Units	Law Units	
			15.0	15.0	
Cumulative Totals			60.0	60.0	

 Carol Rachwald, Registrar

Natalie Friedberg
Student ID: 3036489041
Admit Term: 2021 Fall

Berkeley Law
University of California
Office of the Registrar

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Page 2 of 2

		2023 Fall			
Course		Description	Units	Law Units	Grade
LAW	281	Family Law	4.0	4.0	
		Khiara Bridges			
			Units	Law Units	
Term Totals			0.0	0.0	
Cumulative Totals			60.0	60.0	




Carol Rachwald, Registrar

This transcript processed and delivered by Parchment

University of California
Berkeley Law
270 Simon Hall
Berkeley, CA 94720-7220
510-642-2278

KEY TO GRADES

1. Grades for Academic Years 1970 to present:

HH	-	High Honors	CR	-	Credit
H	-	Honors	NP	-	Not Pass
P	-	Pass	I	-	Incomplete
PC	-	Pass Conditional or Substandard Pass (1997-98 to present)	IP	-	In Progress
NC	-	No Credit	NR	-	No Record

2. Grading Curves for J.D. and Jurisprudence and Social Policy PH.D. students:

In each first-year section, the top 40% of students are awarded honors grades as follows: 10% of the class members are awarded High Honors (HH) grades and 30% are awarded Honors (H) grades. The remaining class members are given the grades Pass (P), Pass Conditional or Substandard Pass (PC) or No Credit (NC) in any proportion. In first-year small sections, grades are given on the same basis with the exception that one more or one less honors grade may be given.

In each second- and third-year course, either (1) the top 40% to 45% of the students are awarded Honors (H) grades, of which a number equal to 10% to 15% of the class are awarded High Honors (HH) grades or (2) the top 40% of the class members, plus or minus two students, are awarded Honors (H) grades, of which a number equal to 10% of the class, plus or minus two students, are awarded High Honors (HH) grades. The remaining class members are given the grades of P, PC or NC, in any proportion. In seminars of 24 or fewer students where there is one 30 page (or more) required paper, an instructor may, if student performance warrants, award 4-7 more HH or H grades, depending on the size of the seminar, than would be permitted under the above rules.

3. Grading Curves for LL.M. and J.S.D. students for 2011-12 to present:

For classes and seminars with 11 or more LL.M. and J.S.D. students, a mandatory curve applies to the LL.M. and J.S.D. students, where the grades awarded are 20% HH and 30% H with the remaining students receiving P, PC, or NC grades. In classes and seminars with 10 or fewer LL.M. and J.S.D. students, the above curve is recommended.

Berkeley Law does not compute grade point averages (GPAs) for our transcripts.

For employers, more information on our grading system is provided at: <https://www.law.berkeley.edu/careers/for-employers/grading-policy/>

Transcript questions should be referred to the Registrar.

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STATE OF CALIFORNIA

GAVIN NEWSOM, Governor

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

May 16, 2023

Dear Sir or Ma'am,

It is with great pleasure that I recommend Natalie Friedberg for this judicial clerkship. As one of our summer interns at the California Public Utilities Commission (CPUC), Natalie was a joy to work with and a valuable addition to our team. With only one year of law school under her belt, I was deeply impressed with the quantity and quality of contributions she made to the Commission. She consistently brought assiduity, curiosity, and positivity to the internship.

Right off the bat, Natalie was assigned to write a memo on utility-shareholder financial arrangements, a highly technical issue with decades of conflicting precedent. Despite having little to no background in public utilities law, she dove in wholeheartedly and produced a highly informative internal memo that received rave reviews from our ratepayer advocate branch. The thorough analysis and persuasive arguments in Natalie's memo will be useful in many future proceedings. To give one example, a staff attorney directly quoted excerpts from her memo in a prehearing conference on water affordability.

Similarly, Natalie wrote a section of the CPUC's public comment on a federal transmission rulemaking which was so appreciated by the attorney she worked with that he made sure she received credit in the signature block—not a common practice at the Commission—in recognition of her exceptional contributions. For a rising 1L to produce such a useful work product speaks to Natalie's extremely strong legal research and writing skills.

Natalie is great to have as an employee due to her positive attitude and obvious dedication to the quality of her work. At our weekly "Brown Bag" lunches with experts and attorneys from different branches of the CPUC, Natalie was always engaged, asking insightful questions that demonstrated her wide-ranging curiosity and passion for knowledge. Despite coming into the internship with a particular interest in environmental law, Natalie applied herself with equal enthusiasm and tenacity to transportation and telecommunications research projects, even putting in extra hours at the end of the summer to finish up a memo on trade secret appeals.

509084172

I have consulted with my CPUC colleagues for whom Natalie worked and they join me in strongly recommending her for this position.

Sincerely,

/s/ Darryl Gruen

Darryl Gruen
Staff Counsel
California Public Utilities Commission
Email: darryl.gruen@cpuc.ca.gov
Telephone: (415) 703-1973

May 8, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

RE: Letter of Recommendation for Natalie Friedberg

Dear Judge Walker:

I write to offer my strong recommendation of Natalie Friedberg for a position in your chambers. Natalie was a student in my Energy Law course in Fall 2022 as well as my Administrative Law course in Spring 2023. I have gotten to know Natalie well in office hours, and after her strong performance in Energy Law last semester I asked her to be my research assistant. She has proven to be one of the ablest research assistants I have employed in over ten years in the academy. That work, along with her strong record in class and her professionalism and maturity, give me great confidence that she will be a superb law clerk.

In class, Natalie moves debate forward with thoughtful formulations of the strongest arguments for or against a given position. She has no difficulty engaging in charitable reconstruction of the other side's arguments, presenting those arguments in the most sympathetic light in order to evaluate and critique them. Natalie was invariably prepared to discuss the material, even though I used a panel system where students knew they would only be called on particular days. She attended office hours regularly during both semesters, asking sophisticated questions that helped to clarify material not only for her but for all of the other students present.

Natalie is one of the most talented research assistants I have ever had the pleasure to work with, and I would hire her again to support me in any undertaking. I would like to highlight two of Natalie's skills in particular. The first is her ability to problem-solve, even in areas in which she has little prior experience. Natalie worked with me on a research project involving public participation at state public utility commissions. I gave her broad parameters for the project, asking that she collect information on what kinds of participatory programs state commissions had in place. Natalie not only discovered efficient ways to source that information, but she suggested ways to collect data on program metrics and evaluations that made the project much richer. The second skill is her thoughtful approach to the organization of ideas and materials. On her own initiative, Natalie categorized the various participatory programs by type, demonstrating a natural aptitude for classification in a way that facilitated understanding rather than obscuring nuance.

Natalie is patient and kind, qualities that have endeared her to her peers in the Environmental Law program here at Berkeley. She is beloved by her colleagues at the Environmental Law Quarterly, where she serves on the Board as an Articles Editor, for her warmth as well as willingness to take on leadership responsibilities.

While Natalie has focused much of her study to date on Environmental and Energy courses, her coursework also displays breadth. She has performed at or near the top of her class in doctrinal courses like Evidence, Property, and Civil Procedure, and has excelled in experiential courses like Negotiations and the Environmental Law Clinic. Natalie has run towards, rather than away from, complex areas of the law like public utility regulation, serving as a legal intern at the California Public Utilities Commission during her first summer in law school. I am aware that Natalie's work on water affordability (a topic about which she knew virtually nothing before the summer) was adopted almost verbatim by the Commission's ratepayer advocate.

Natalie will bring strong legal acumen, a healthy work ethic, and a delightful presence to this position. She believes strongly in helping others and giving back to her colleagues and community, as demonstrated by her work with Americorps as well as her ongoing role as tutor in the legal research and writing program here at Berkeley Law, and as a student leader of our Food Justice Project.

Natalie will be a genuine asset as well as a pleasure to work with, and I hope you will give her application the fullest consideration. Please do not hesitate to contact me with any further questions by phone (cell: 510-502-7948) or email (sharon.jacobs@berkeley.edu).

Sincerely,

Sharon Jacobs
Professor of Law
UC Berkeley School of Law

Sharon Jacobs - sharon.jacobs@berkeley.edu

May 19, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing this letter to highly recommend Natalie Friedberg for a judicial clerkship. I have had the privilege of teaching and mentoring Natalie during her time as a law student at Berkeley Law and I can confidently attest to her exceptional abilities in legal research, writing, and oral advocacy. She has also been a superb tutor.

Natalie just completed her second year at Berkeley Law. I had the pleasure of teaching her throughout her first year, initially in Legal Research and Writing (fall semester) and then in Written and Oral Advocacy (spring semester). In both classes, Natalie's commitment to excellence, attention to detail, and strong analytical skills consistently set her apart from her classmates.

Throughout her first year, Natalie produced well-reasoned, concise, and persuasive legal arguments. Her written work exhibited a high degree of professionalism, clarity, and precision. Indeed, her final brief in Written and Oral Advocacy earned her an Honors grade in her highly competitive section. An experienced practicing attorney could have filed Natalie's final brief with justifiable pride. In addition, Natalie is an efficient and successful researcher. In both the fall and spring semesters, she quickly located the relevant cases for each of the problems we considered. Natalie adeptly utilized various legal databases, primary and secondary sources, and demonstrated a thorough understanding of complex legal issues.

Additionally, Natalie's proficiency in oral advocacy was exceptional. She consistently displayed a strong command of legal principles, effectively communicated her arguments, and demonstrated an impressive ability to think quickly and respond persuasively during her final oral argument at the end of the year. Her poise and confidence were noteworthy, and she easily captivated both her judges with her persuasive arguments.

Because of Natalie's hard work in my class, I hired her as one of my tutors for my Legal Research and Writing course last fall and again as a tutor for my Written and Oral Advocacy class this spring. As a tutor, Natalie was responsible for reading student research assignments throughout the year and giving students written feedback. There were often quick turn-around times on these assignments, but Natalie always managed to meet the deadlines and give students substantive and constructive comments. Natalie also helped students practice oral arguments. Without exception, the first-year students appreciated Natalie's help. I heard nothing but positive reviews from my students on the high quality of her feedback and assistance.

I must also emphasize Natalie's excellent interpersonal skills and collaborative nature. She consistently worked well with other students, always contributing constructively to group discussions. Her ability to listen actively and consider different perspectives allowed her to engage effectively with her peers, resulting in productive collaborations and valuable contributions to the overall learning environment. She also showed compassion, empathy, and a great positive attitude while working as a tutor with the first-year students.

In summary, Natalie's dedication, intellectual rigor, and unwavering commitment to excellence make her an ideal candidate for a judicial clerkship. I have no doubt that she will be an asset to any judge or court for whom she clerk, providing insightful legal analysis and delivering clear written opinions. I am confident that she will approach her duties with utmost professionalism, diligence, and integrity.

Thank you for considering Natalie's application and this recommendation in your process. Please feel free to contact me at areding@law.berkeley.edu or (510) 642-1831, if you have any questions, or if I can provide any further information.

Sincerely,

Ann Marie Reding
Professor of Legal Writing
Legal Research, Analysis, and Writing Program
University of California, Berkeley School of Law

Ann Reding - areding@law.berkeley.edu - 5106421831

NATALIE FRIEDBERG – WRITING SAMPLE

Note: This brief is based on a hypothetical fact pattern from a written and oral advocacy class. The research, analysis, and writing are substantially my own, including revisions based on comments provided by my professor. Where indicated, portions of this brief have been eliminated for the purpose of brevity. I would be happy to provide the complete brief upon request.

I. INTRODUCTION

The Federal Highway Administration (FHWA) rightfully withheld video footage of four construction workers taken just prior to their deaths in the tragic Caveman Bridge collapse because disclosure would constitute a “clearly unwarranted” invasion of the surviving families’ privacy. Plaintiff Workers Protection Project (WPP), a worker safety nonprofit, filed a Freedom of Information Act (FOIA) request to release the video, which featured interviews with the workers sharing personal stories less than thirty minutes before they were crushed by a falling piece of the bridge. FHWA declined WPP’s request, citing Exemption 6 of FOIA which requires agencies to withhold documents when disclosure would violate a substantial privacy interest. WPP now seeks an order to compel FHWA to release the video. However, complying with WPP’s request would violate FHWA’s duty to protect the surviving families from unnecessary emotional anguish. Moreover, the raw footage from what would eventually become a short promotional video reveals no information about FHWA’s conduct which cannot be found in the public transcript of the video or elsewhere. Therefore, the privacy interest of grieving families seeking to avoid emotional anguish easily outweighs any public interest in a redundant disclosure. FHWA respectfully moves for summary judgment to apply Exemption 6 in deference to four families who are entitled to mourn in peace.

II. STATEMENT OF FACT [Omitted]

III. ARGUMENT

A. Legal Standard for Summary Judgment [Omitted]

B. Defendant FHWA must withhold the footage because disclosure would be a “clearly unwarranted” invasion of privacy under Exemption 6.

Congress passed the Freedom of Information Act (FOIA) to promote transparency by permitting individuals to request information from government agencies. *U.S. DOJ v. Reps. Comm. for Freedom of the Press*, 489 U.S. 749, 754 (1989). Under Exemption 6, FOIA also protects individuals from unnecessary violations of their basic right to privacy by prohibiting agencies from disclosing personal information which happens to be in government files but “reveals little or nothing” about an agency’s conduct. *New York Times v. NASA (NASA II)*, 782 F. Supp. 628, 632 (D.D.C. 1991); 5 U.S.C. § 552(b)(6). For Exemption 6 to apply, the Court must find that: (1) the information is contained in a personnel, medical or “similar” file; (2) the requested documents contain a substantial privacy interest; and (3) disclosure would be “clearly unwarranted,” such that the privacy interest outweighs any existing public interest. *Dep’t. of Air Force v. Rose*, 452 U.S. 352, 372 (1976); 5 U.S.C. § 552(b)(6). Courts apply the same analysis for Exemption 6 and cases involving Exemption 7(C), which applies to information compiled for law enforcement purposes, because the privacy and public interest tests are “essentially the same.” *Jud. Watch, Inc. v. DOJ*, 365 F.3d 1108, 1125 (D.C. Cir. 2005).

Plaintiff’s request for the FHWA video meets the threshold requirement as a “similar file” because the footage contains recognizable voices and images of individual workers. The families of the four deceased workers have a significant privacy interest against disclosure because releasing the video of their loved ones taken less than an hour before their deaths would cause severe personal distress and result in media harassment. Public interest in disclosure is

minimal because the video contains no information regarding FHWA's conduct which cannot be found in the transcript or from other sources. After weighing the negligible public interest against the compelling privacy interest of four grieving families, the Court must deny Plaintiff's request under Exemption 6.

1. **The requested video meets the broadly interpreted "similar files" threshold requirement because it contains personal information about each of the deceased workers.** [Omitted]
2. **The surviving families have a substantial privacy interest in withholding intimate footage of their loved ones to avoid emotional anguish and media harassment.**

The Supreme Court has rejected a "cramped notion" of personal privacy as encompassing only information related to oneself, instead defining it as a general interest in "avoiding disclosure of personal matters." *Reps. Comm.*, 489 U.S. at 763. Disclosures can still violate privacy even when personal information is not of an "embarrassing or intimate nature." *Horner*, 879 F.2d at 875. Additionally, surviving families of deceased individuals have a substantial privacy interest in information concerning a relative who has died when exposure to it would cause severe emotional distress. *Nat'l Archives & Recs. v. Favish*, 541 U.S. 157, 165 (2004).

[Omitted paragraphs describing *Favish* and *Charles*]

Similarly, in *NASA II*, the Court held that the surviving families of seven astronauts on the Challenger shuttle had a significant privacy interest in a voice recording taken just before the crash because releasing the tape would trigger severe emotional distress and unwanted media attention. 782 F. Supp. at 633. Even though a full transcript had already been made public and the tape contained only technical observations, the Court determined that the sound of the astronauts' voices was an "intimate detail" protected by Exemption 6. *Id.* at 631–32. This is because "exposure to the voice of a beloved family member immediately prior to that family

member's death" would cause pain to the surviving families. *Id.* at 632. Furthermore, releasing the tape would subject the families to a "barrage of unwanted mailings and personal solicitations" from reporters seeking comment on the tape. *Id.* (quoting *Horner*, 879 F.2d at 879). This would amount to a "disruptive assault" on the families' reasonable expectations of "solitude and seclusion" in one's own home. *Id.*

The surviving families of Church, Sanchez, Farrell, and Orozco have a substantial privacy interest because disclosing the video would subject them to severe emotional distress and unwanted media harassment. First, releasing the footage would be uniquely painful to the families because it features the workers discussing personal stories with their own voices and mannerisms. Even without considering the content of the interview, the workers' voices and images themselves are protected from unnecessary exposure, just as the Court held in *NASA II* that "how the astronauts said what they did" would be painful even though the observations were purely technical. *See* 782 F. Supp. at 631 (emphasis in original); Dexter Decl. ¶ 22. But here, the recorded conversations were more intimate than technical observations, making exposure to the footage even more painful for the families than the voice recording in *NASA II*. *See id.*, Dexter Decl. Ex. E. Sanchez and Church's retrospectively ironic comments about their pride in making the bridge "safer" and strong enough to "[stand] for another century" less than an hour before it collapsed and killed four people would uniquely hurt their families. *See id.* Hearing Church recount, in his own voice, how he felt a special connection, through his grandfather's legacy and childhood memories, to the bridge that killed him, would uniquely upset his family. *See id.* And finally, Sanchez's widow would be uniquely upset to hear her deceased husband describe, in his own voice, their marriage and plans for a large family, minutes before he died just one week after their wedding. *See id.*

Courts determine privacy interest based on what would cause pain for the families, not on whether the content is graphic. In *Charles*, the court held there was no substantial privacy interest in anonymized autopsy reports because, even though the reports contained graphic images, the families would not be pained by exposure to the “vivid details of the last moments” of their loved ones’ lives. *See* 935 F. Supp. 2d at 97, 100. Unlike in *Charles*, there is more than a “mere possibility” that the families of the deceased workers would be knowingly exposed to the intimate footage because the workers’ faces and voices are “easily identifiable at all times.” *See id.*; Dexter Decl. ¶ 22. The privacy interest is substantial because hearing the workers recount personal stories in their own voices would be painful for families, which does not require the content to be graphic. *See* 935 F. Supp. 2d at 99; Dexter Decl. Ex. E.

Second, exposure to the video would be painful to the families as it is the last footage of their loved ones alive in the same place they were killed by the collapse. *See* Martinez Decl. ¶ 12. Just as in *NASA II*, where the Court held that a recording of technical observations became subject to substantial privacy interests because it was taken “immediately prior” to the astronauts’ deaths, here the FHWA recording, while initially intended for promotional use, has become intimate because it immortalizes the workers’ last living moments in the place that they died. *See* 782 F. Supp. at 631; Dexter Decl. ¶¶ 14, 18. It makes no difference to the families whether the recording captures the final moments before death, as in *NASA II*, or moments thirty minutes before death, as in the FHWA video, because in both cases the requested document is the last record of the deceased taken before they died. *See* 782 F. Supp. at 633; Dexter Decl. ¶ 18.

Third, disclosure would violate a substantial privacy interest by subjecting the surviving families to a renewed wave of unwanted media harassment. WPP, which has 100,000 newsletter

subscribers and a national media presence, intends to widely publicize the video with plans to present it at a news conference and to federal and state legislators across the country. *See* Martinez Decl. ¶¶ 2, 13. The surviving families have already been subject to significant national media attention since *The New York Times*, *The Wall Street Journal*, *The Washington Post*, and *USA Today* covered the collapse, along with local papers in Oregon which continue to report on the story. *See id.* ¶ 7. Just as in *NASA II* where the Court found that disclosure would violate the surviving families' privacy by prompting a renewed "barrage" of press inquiries, here it is also likely the workers' families would face yet another wave of media attention if the FHWA were to release the footage, given widespread interest in the tragedy. *See id.*; 782 F. Supp. at 632. This would infringe on the privacy of friends and family who have already issued press releases or refused to comment, violating their right to "solitude and seclusion" in one's own home. *See NASA II*, 782 F. Supp. at 632; Martinez Decl. ¶ 8. Even if media interest in the Caveman Bridge collapse was less intense than the space shuttle crash in *NASA II*, this degree of combined national and local attention focused on four families is still disruptive. *See* 782 F. Supp. at 632; Martinez Decl. ¶ 7. This is analogous to *Favish*, where Foster's sister was "harassed by and deluged with" press inquiries seeking comment on her brother's suicide, even though his death was not as high-profile as the Challenger disaster. *See* 541 U.S. at 167; Martinez Decl. ¶ 7; *see also Horner*, 879 F.2d at 876 (retired federal employees have a substantial interest against receiving unwanted spam mail).

Because releasing the video of the workers less than an hour before their deaths would subject the surviving families to severe emotional distress and media harassment, disclosure would violate a substantial privacy interest.

3. Public interest in disclosing the FHWA video is minimal because it reveals no new information on agency conduct which does not exist elsewhere.

To justify releasing a government record that violates a privacy interest, the plaintiff must show not only that disclosure serves a valid public interest, but also that the public interest is substantial enough to outweigh the privacy interest at stake. *Ripskis v. Dept. of Hous. & Urb. Dev.*, 746 F.2d 1, 3 (D.C. Cir. 1984); 5 U.S.C. § 552(b)(6). For Exemption 6, the only valid public interest is in disclosing “official information that sheds light on an agency’s performance of its statutory duties.” *Reps. Comm.*, 489 U.S. at 772. When weighing the public interest, courts consider whether that interest can be “substantially advanced” by other means. *Ripskis*, 746 F.2d at 3. Additionally, “mere speculation” that disclosure serves a public interest is not sufficient to outweigh a substantial privacy interest. *U.S. Dep’t of State v. Ray*, 502 U.S. 164, 178 (1991).

[Omitted paragraphs describing *NASA II* and *Advocates for Highway Safety*]

In *Multi Ag*, the court held that disclosing USDA databases containing private farm data served a significant public interest because the data would enable the public to monitor the agency’s subsidy program. 515 F.3d at 1232. USDA objected to publicizing their databases which included aerial photographs, GIS data, irrigation practices, acreage, and the number of crop rows for hundreds of thousands of private farms because the information could “provide a snapshot” of a farm’s financial circumstances. *Id.* at 1230. To qualify for financial assistance, USDA required farmers to submit this information, most of which was not available in other files containing “only general state and county local information.” *Id.* at 1226. The court concluded that disclosure would enable the public to review the agency’s compliance monitoring more easily and that government programs like USDA’s subsidies which distribute extensive funds merit a “special need for public scrutiny.” *Id.* at 1232.

Public interest in disclosing the FHWA footage is minimal at best because it sheds no new light on government conduct which cannot be found elsewhere. First, the information found in the video reveals nothing about why the bridge collapsed or how the Competitive Highway Bridge Program (CHBP) was implemented. *See* Dexter Decl. ¶ 23. While WPP's stated purpose of using the video to raise awareness on worker safety issues is laudable, it is not valid for public interest under Exemption 6, which only considers information that sheds light on official conduct. *See Reps. Comm.*, 489 U.S. at 772; Martinez Decl. ¶ 13. Just as in *NASA II* where there was negligible public interest in disclosure because the tape revealed nothing about the crash, disclosing the FHWA video does not serve a substantial public interest because it does not show why the bridge collapsed. *See* 782 F. Supp. at 633; Dexter Decl. ¶ 22.

Additionally, none of the details unique to the requested footage shed new light on any substantive aspect of CHBP implementation or other agency conduct. *See* Dexter Decl. Ex. E. After the FHWA released a full transcript of the video, the only information not yet publicly available were the workers' voices and facial expressions during the interview and brief footage of asphalt removal with background construction noises. *See id.* ¶ 17. Unlike in *Advocates*, where footage of the drivers' facial expressions was necessary to evaluate the outcomes of the study, here the workers' facial expressions and vocal inflections have no bearing on how FHWA implemented the CHBP. *See* 818 F. Supp. 2d at 124. While Plaintiff may argue that the video, showing the placement of workers while removing asphalt, could shed light on workplace safety, this interest is as "speculative and subjective" as the interest in gleaning information from "ambient cabin sounds" in *NASA II*. *See* 782 F. Supp. at 633; Dexter Decl. Ex. F. Further, it has no direct bearing on the FHWA's conduct because construction was handled by a subcontractor hired by the Oregon DOT. *See* Dexter Decl. Ex. F. While the footage was initially intended to be

part of a video educating the public about the CHBP, this video was meant to include other content aside from snippets of interviews with the Caveman Bridge workers, such as footage of the Snake River Bridges and other CHBP bridges across the country. *See id.* Ex. E. As only a small part of what would eventually become a short promotional video, the requested footage retains a smaller portion, if any, of its intended educational value, unlike the massive database in *Multi Ag* which enabled significant public oversight over the USDA. *See id.*; 515 F.3d at 1226.

Second, any information contained in the requested video which may shed light on FHWA conduct is available from other sources. The transcript contains all the substantive information in Deputy Administrator Kirby's voiceover on the CHBP's mission and funding. *See* Dexter Decl. Ex. E. The Oregon DOT's video on the Caveman Bridge project, taken only two years prior, would be more useful for evaluating conditions before the collapse because it features footage of the bridge from multiple angles, closeup visuals of cracked concrete, and interviews with an engineer and project leader about the construction and planning process. *See id.* ¶ 16. The public could evaluate the CHBP more effectively by requesting Oregon DOT's grant application containing GIS data, maps, graphics, risk assessments, location descriptions, and more. *See id.* Ex. F. Finally, WPP could study worker safety more effectively by investigating the subcontractor, which is likely working on a similar bridge project in Oregon in accordance with CHBP's bundling requirements. *See id.*; 23 U.S.C. § 7144(i). Conversely, in *Multi Ag*, the requested data on private farms had no equivalent elsewhere, because the databases contained detailed information submitted only for subsidy applications. *See* 515 F.3d at 1226; Dexter Decl. Exs. E, G. While in *Multi Ag* there was a substantial public interest in disclosing data which would uniquely shed light on the USDA's activities, here public interest is weak

because many other sources of information would shed light on FHWA's activities more effectively than the requested video. *See* 515 F.3d at 1226; Dexter Decl. Ex. G.

Third, the Caveman Bridge project does not merit the same degree of scrutiny as other instances of extensive government spending because it represents a small fraction of the CHBP's funding. Caveman Bridge received \$900,000 in CHBP grants, which is only 20% of the cost of the driver fatigue study in *Advocates*, less than 20% of the full cost of the bridge, and only 4% of CHBP's total grant funding. *See* 818 F. Supp. 2d at 127; Dexter Decl. Ex. G. Unlike in *Multi Ag*, where the court subjected the USDA to special scrutiny for distributing large quantities of public funding to hundreds of thousands of recipients, here CHBP is funding less than half of a single project. *See* 515 F.3d at 1232; Dexter Decl. ¶ 15. While the Caveman Bridge was representative of the type of project CHBP was enacted to support, neither the conditions of the collapse nor the subcontractor's workplace safety practices can be extrapolated to shed light on the CHBP overall because they are particular to this project. *See* Dexter Decl. ¶ 16, Ex. F.

Public interest in disclosure is speculative and insubstantial because the requested footage reveals no new information about the FHWA's conduct which cannot be found elsewhere.

- 4. Disclosure would be "clearly unwarranted" because the surviving families' substantial privacy interest outweighs any public interest in releasing footage that sheds no light on agency conduct.** [Omitted]

IV. CONCLUSION

Releasing a few minutes of raw footage from what would eventually become a short promotional video reveals nothing new about FHWA's conduct. Given the surviving families' substantial privacy interest in avoiding severe emotional distress, FHWA respectfully moves for summary judgment to apply Exemption 6.

Applicant Details

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Contact Phone Number	9524657331

Applicant Education

BA/BS From	Yeshiva University
Date of BA/BS	May 2019
JD/LLB From	Northwestern University School of Law
	http://www.law.northwestern.edu/
Date of JD/LLB	May 10, 2024
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	Law Review
Moot Court Experience	No

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	Yes
Post-graduate Judicial Law Clerk	No

Specialized Work Experience

Recommenders

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

AKIVA FRISHMAN

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June 12, 2023

The Honorable Jamar Walker
United States District Court, Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, Virginia 23510

Dear Judge Walker:

Please find enclosed an application for a clerkship in your chambers for 2024-25. I am a third-year student at Northwestern Pritzker School of Law and will graduate in May 2024. A clerkship in your chambers provides an invaluable opportunity to explore a broad range of challenging legal issues, learn how an accomplished jurist navigates difficult decisions, and collaborate with a distinguished cohort of fellow clerks.

My application includes a resume, law school transcript, and writing sample. The Law School's clerkship office added letters of recommendation from the following individuals:

Professor Zachary D. Clopton, Northwestern Pritzker School of Law
zclopton@law.northwestern.edu; (312) 503-5063

Professor Shari S. Diamond, Northwestern Pritzker School of Law
s-diamond@law.northwestern.edu; (312) 503-2040

Professor Meredith M. Rountree, Northwestern Pritzker School of Law
meredith.rountree@law.northwestern.edu; (312) 503-4852

Matthew Faiella, Trial Attorney, U.S. Department of Justice
matthew.faiella@usdoj.gov; (202) 305-6829

In addition, the Law School's clerkship director, Professor Janet Brown, is available to answer any questions. You may reach her at jbrown@law.northwestern.edu or (312) 503-0397.

I would value the opportunity to interview with you. Please contact me if I may provide any additional information in support of my candidacy. Thank you for considering my application.

Respectfully,



Akiva Frishman

AKIVA FRISHMAN

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EDUCATION

Northwestern Pritzker School of Law, Chicago, IL

Candidate for Juris Doctor, May 2024, GPA: 3.65

- *Northwestern University Law Review*, Executive Editor
- Dean's List (four semesters)
- Teaching Assistant to Professor M. Rountree (Criminal Law, Fall 2022)
- Research Assistant to Professor Z. Clopton, analyzing state supreme court original jurisdiction (Summer 2022)

Yeshiva University, New York, NY

Bachelor of Arts, Economics, summa cum laude, May 2019, GPA: 3.86

- Dean's List (all semesters); The Biblical Joseph Award for Outstanding Achievement in Economics
- Student Council, Vice-President
- The Commentator Student Newspaper, Senior Editor
- Wilf Campus Writing Center, Writing Tutor

EXPERIENCE

U.S. District Court for the Northern District of Illinois, Judge Sharon Johnson Coleman, Chicago, Illinois

Judicial Extern, August 2023 – December 2023

Sidley Austin, New York, NY

Summer Associate, May 2023 – July 2023

U.S. Department of Justice, Disability Rights Section, Washington, DC

Legal Intern, May 2022 – July 2022

- Delivered key research on FRCP R. 26 which was instrumental in striking a defendant's expert's report
- Drafted language for summary judgment brief based on review of deposition transcripts and other documents

U.S. Attorney's Office for the Southern District of New York, New York, NY

Paralegal, September 2019 – July 2021

- Assisted Civil Frauds Unit AUSAs in all stages of the litigation process, particularly False Claims Act matters
- Analyzed 400K+ company documents and identified evidence of fraud
- Conducted legal research, cite-checked court filings, drafted subpoenas, and authored case notes

U.S. House of Representatives, Representative Dean Phillips, Washington, DC

Legislative Intern, June 2019 – August 2019

- Annotated proposed legislation, authored a speech that appeared in the *Congressional Record*, and drafted 20+ decision memoranda advising the Congressman on relevant policy positions
- Spearheaded intern hiring committee, processed constituent service requests, and provided Capitol tours

National Jewish Council for Disabilities, New York, NY

Associate, August 2016 – May 2019

- Delivered lectures on disability inclusion to a combined 2000+ people in 15 cities across the U.S.
- Coordinated 25 weekend retreats and oversaw the disability support responsibilities of 50+ volunteers
- Led 75 students and people with disabilities on a 5 week travel abroad program in 2018, directing 20 employees

Southern Minnesota Regional Legal Services, St. Paul, MN

Legal Intern, May 2016 – July 2016

- Provided legal research/support to attorneys in family, senior, disability, and housing law

ADDITIONAL INFORMATION

Community Involvement: JUF Café, a restaurant-style soup kitchen, *Volunteer Waiter*, November 2021 – Present

Interests: Reading (32+ books annually), Yardwork, Yoga

Northwestern

PRITZKER SCHOOL OF LAW

UNOFFICIAL GRADE SHEET

THIS IS NOT AN OFFICIAL TRANSCRIPT

The Northwestern University School of Law permits the use of this grade sheet for unofficial purposes only.
To verify grades and degree, students must request an official transcript produced by the Law School.

Name:	Akiva Frishman	Total Earned Credit Hours:	58.000
Matriculation Date:	2021-08-30	Total Transfer Credit Hours:	0.000
Program(s):	Juris Doctor	Cumulative Credit Hours:	58.000
		Cumulative GPA:	3.656

Term	Term GPA	Course	Course Title	Credits	Grade	Professor
2021 Fall	3.522	BUSCOM 510	Contracts	3.000	B+	Nzelibe,Jide Okechuku
		CRIM 520	Criminal Law	3.000	A	Rountree,Meredith Martin
		LAWSTUDY 540	Communication& Legal Reasoning	2.000	A-	Holman,Rebekah
		LITARB 530	Civil Procedure	3.000	B+	Clopton,Zachary D.
		PPTYTORT 550	Torts	3.000	B+	Friedman,Ezra
2022 Spring	3.524	BUSCOM 601S	Business Associations	3.000	A-	Kang,Michael S.
		CONPUB 500	Constitutional Law	3.000	A-	Delaney,Erin F.
		LAWSTUDY 541	Communication& Legal Reasoning	2.000	A-	Holman,Rebekah
		LITARB 650	Civil Procedure II	3.000	B+	Clopton,Zachary D.
		PPTYTORT 530	Property	3.000	B+	DiCola,Peter Charles
2022 Fall	3.811	CONPUB 628	Presidential Power and the Law	3.000	A-	Kitrosser,Heidi D
		CONPUB 650	Federal Jurisdiction	3.000	A	Redish,Martin H
		CONPUB 747	Law & Reg along the Frontier	2.000	A-	Rodriguez,Daniel B
		LITARB 621	Appellate Advocacy	3.000	A-	Rountree,Meredith Martin
		LITARB 671	Juries	3.000	A	Diamond,Shari
2023 Spring	3.751	BUSCOM 599	Internal Corporate Investigati	2.000	B+	Tzur,Paul H.
		BUSCOM 690	Basic Federal Income Taxation	3.000	A	Tokic,Genevieve Anne
		CONPUB 600	Administrative Law	3.000	A-	Speta,James B
		CRIM 610	Constitutional Crim Procedure	3.000	A-	Rountree,Meredith Martin
		LITARB 601	Legal Ethics & Prof'l Resp	3.000	A	Muchman,Wendy
		LITARB 686	Contemp Prob in Complex Lit	2.000	A-	Hoeflich,Adam Lawrence

Run Date: 6/2/2023

Run Time: 15:41:05 PM

NORTHWESTERN PRITZKER SCHOOL OF LAW

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to recommend Akiva Frishman for a judicial clerkship in your chambers. Akiva was in my class on Juries last year and I was impressed by his unusual interest in procedure generally, including the procedures that lead to identification of the appropriate venire in jury trials. He came up with a creative approach to vicinage that, although I'm not sure I agree with, produced a strong argument in his final paper that is thought-provoking. Although the final papers in my 20-person seminar are generally interesting and well-written and each year a few end up being published, I only encourage a couple of students to submit their papers for publication. Akiva was one of two students I encouraged to think about publication in last year's seminar.

Students in the class are required to submit three questions each week, based on the readings for the course. Akiva's questions always indicated that he had been reading thoroughly, but his questions also often opened areas of discussion that went beyond the readings. For example, on the issue of how the limited, but difficult-to-apply rules on the use of criminal record evidence against a defendant who takes the stand, are different than the prohibition against the use of such evidence against a defendant who does not testify, he wrote: "In some ways, the very act of pleading 'not guilty' is a form of testimony." An interesting observation that stimulated a good conversation about the nature of evidence. On another occasion, we read an article suggesting that juries insufficiently discount informant testimony and most of the students were surprised by the finding. Akiva properly questioned whether one study was sufficient to support that conclusion. Unfortunately, there are others that show the same result, but he was correct to raise the question. In general, Akiva's questions in class and in his written submissions also aimed at the heart of the issues: why require unanimity in juries, but not in Congress? Does the foreperson role invest too much power in one person? Why is 12 the maximum size of the jury? The class was enriched by having Akiva in it.

Akiva's seminar paper is called *The Case for the County: Why Federal Courts Should Draw Jurors from the Relevant County, Not from Larger Federal Jury Districts*. Akiva took seriously the vicinage requirement of the Sixth Amendment, but also argued that the local community was relevant in civil contexts. He first examined the structural architecture that produces federal/state jury disparities in jury venires, specifically federal district courts' "jury selection plans" and their tendency to group together numerous state counties. He then argued that the federal courts should draw jurors solely from the county-level. He suggested that, in the civil context, such a shift would comport with *Erie* doctrine values aimed at eliminating substantive differences between federal/state forums, thereby disincentivizing forum shopping. In the criminal context, he argued that drawing jurors from the county-level best would best enact the vicinage principles embodied in the Sixth Amendment. He grappled with the tension between values of local representation on the jury with the values of greater heterogeneity that may accompany a wider reach. I appreciated that sensitivity to both the costs and benefits of his proposals. It is a thoughtful piece, and while there are practical problems with his proposal (e.g., not all counties have federal courts), I think that taking vicinage seriously is an idea that is worth more attention than it has received in the past.

Akiva's writing skills and attention to technical detail are unusual. Even the first draft of his paper was carefully and accurately footnoted. He is also a principled person who successfully negotiates two worlds that sometimes clash: his strong religious observance and his LGBT identity. I have been impressed by his comfort in managing both identities. He also has a strong commitment to the rights of the disabled, as his record shows. In sum, he has the intelligence, skills, and temperament to be a first-rate judicial clerk.

I hope you will give him serious consideration. If you have any further questions, please do not hesitate to contact me.

Respectfully,

Shari Seidman Diamond, PhD, JD
Howard J. Trienens Professor of Law
and Professor of Psychology
Northwestern Pritzker School of Law
Director, JD/PhD Program
Research Professor, American Bar Foundation

Shari Seidman Diamond - s-diamond@law.northwestern.edu - (312) 503-2040

NORTHWESTERN PRITZKER SCHOOL OF LAW

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am pleased to recommend Akiva Frishman to you. I taught Mr. Frishman criminal law during the Fall of his 1L year. This Fall, he was in my Appellate Advocacy class, and this Spring, he enrolled in my Constitutional Criminal Procedure class, which surveys the constitutional regulation of the police via the Fourth, Fifth, and Sixth Amendments. He earned an A in Criminal Law, and an A- in both Appellate Advocacy and Constitutional Criminal Procedure. Each of these classes is graded on a competitive curve and these grades reflect his excellent work.

I was able to work most closely with Mr. Frishman in Appellate Advocacy. This is a small, writing-intensive simulation course where students research a pair of legal issues, draft an appellate brief, and present oral argument. Mr. Frishman's class worked with a lightly edited transcript of a suppression hearing that required the students to research Texas law interpreting *Pennsylvania v. Muniz* and apply Texas law regarding knowing, voluntary, and intelligent waivers. Mr. Frishman's work on both legal questions was outstanding, especially as to his careful analysis of the wide array of cases. In writing about cases, I have found that students often either get mired in irrelevant detail or use cases at too high a level of abstraction. Mr. Frishman did a terrific job in identifying the salient aspects of the cases and weaving them into a fluid, cogent legal analysis. He also did very well in his oral argument, demonstrating his extensive preparation.

In addition to coursework, I was very happy to have had Mr. Frishman as my Teaching Assistant for my Fall 1L Criminal Law class this year. I chose him not only because he had done very well in my Criminal Law students, but also because I knew he would work well with 1L students. As you know, most 1L students, especially the first semester of law school, are extraordinarily anxious and insecure. Mr. Frishman's kind and low-key nature and extensive experience with and commitment to inclusivity made him an excellent resource for these students. In addition, I offer my 1L students the optional opportunity outside of class to argue either for the defense or prosecution a case involving substantive criminal law issues. Mr. Frishman with his co-TA cheerfully took charge of organizing and judging the argument sessions, a significant and unusual responsibility to add to his existing commitments.

Finally, because the initial weeks of Appellate Advocacy involve working with a partner and because I had two TAs for Criminal Law, I had the chance to see how Mr. Frishman worked with others. He was always a genial, collaborative, and respectful colleague.

If you have any questions about Mr. Frishman, please do not hesitate to contact me. I believe he would be an outstanding addition to your chambers.

Respectfully,

Meredith Martin Rountree
Senior Lecturer
Northwestern Pritzker School of Law

Meredith Rountree - meredith.rountree@law.northwestern.edu - (312) 503-0227

UNITED STATES DEPARTMENT OF JUSTICE

Civil Rights Division
Disability Rights Section
950 Pennsylvania Ave, NW - 4CON
Washington, DC 20530

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend Akiva Frishman for a 2024-25 clerkship. A skilled writer, analytical thinker, diligent worker, excellent researcher, and exceptionally respectful and professional person, Mr. Frishman will make an outstanding law clerk. Without reservation, I give Mr. Frishman my enthusiastic recommendation.

During the summer of 2022, Mr. Frishman worked as a legal intern in the Disability Rights Section of the Justice Department's Civil Rights Division. The Disability Rights Section's legal internship program is extremely selective, with hundreds of applicants vying for a small number of positions, and it attracts some of the most brilliant law students in the country.

Mr. Frishman quickly distinguished himself as an outstanding intern and made invaluable contributions to the Section's work. Early in his tenure, and with little supervision and instruction, Mr. Frishman conducted and presented critical research on Federal Rule of Civil Procedure 26 in a well-written, concise memorandum. This memorandum was instrumental to the United States' success in striking a defendant's expert report in a high-stakes lawsuit under the Americans with Disabilities Act (ADA). Given his excellent work in support of striking the defendant's expert report, the attorneys on this case continued to rely on Mr. Frishman throughout the summer.

Mr. Frishman's thoughtful and meticulous work, attention to detail, analytical skills, teamwork, and strong work ethic deeply benefited the United States' efforts in this case. For example, Mr. Frishman reviewed thousands of documents produced in discovery, logging and summarizing his review, and orally presenting his findings to a large legal team. In doing so, he exercised excellent judgment in determining what information was relevant to our claims and how best to present that information to both the broader team and to the court. In addition to skillfully completing these challenging and time-sensitive assignments, Mr. Frishman was a self-motivated team player, and always willing to take on more work and help his team. His high-quality contributions allowed the United States to draft strong summary judgment briefing and, ultimately, prevail in a case that established positive ADA precedent in an emerging area of disability rights.

Simply put, Mr. Frishman displays all the characteristics necessary to excel as a law clerk, and I hope you will look favorably on his application. Please contact me at matthew.faiella@usdoj.gov or (202) 598-3193 if you have any questions.

Sincerely,

/s/Matthew Faiella
Matthew Faiella
Trial Attorney
Disability Rights Section

Matthew Faiella - matthew.faiella@usdoj.gov - (202) 598-3193

NORTHWESTERN PRITZKER SCHOOL OF LAW

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to you to recommend my student Akiva Frishman for a clerkship in your chambers. Akiva is hard-working, thoughtful, and a pleasure to be around. I recommend him strongly.

Civil Procedure I & II

I met Akiva during his first semester at Northwestern as a student in my Civil Procedure course. From almost the first class, Akiva showed himself to be a strong student and a thoughtful person. Akiva was not a prototypical “gunner” who dominated class discussion, though when he spoke in class it was always impressive. Instead, I got to know Akiva after class and during office hours. He would frequently come to the podium after class to follow up on something from lecture, almost always with an interesting angle or question. It is easy for a student to ask me to simply repeat something I said in class—it is hard to do what Akiva did, which was to synthesize the material and generate new (and often difficult) questions. Similarly in office hours, Akiva routinely identified some implication or consequence of a legal rule that many students would not see.

Civil Procedure is graded based on a final exam, and Akiva earned a B+. The exams are blind graded, and I admit that at the time I was surprised at the result. I would have predicted a grade in the A range. In any event, I reviewed Akiva’s exam for purposes of this letter and it was quite good. The writing is clear and concise, and he seemed to have a good grasp of the material. Part of his grade reflects that he did not see a couple issues on the essay portion, and because he did not see the issues, he was not able to demonstrate whether he knew the relevant concept—though having worked with him, I suspect he did. I have full confidence from his exam, not to mention our other interactions, that he can be a successful lawyer and law clerk.

Given my very positive experiences with Akiva, I was excited when he enrolled in my Civil Procedure II course. This is a challenging course, especially because it was populated by many of Northwestern’s strongest students. Akiva again was a positive contributor in class, and again he earned a B+ on the exam. On this exam, Akiva wrote a particularly strong answer to a very complicated question related to joinder and jurisdiction. In his answer, Akiva demonstrated both a strong grasp of the material but also a facility with explaining complicated concepts. His answer was thorough and step-by-step—exactly what I would hope for if I were his employer.

Research Assistant Position

Based on our experiences together, I eagerly hired Akiva to serve as a research assistant during the summer after his first year. Akiva had a full-time job with the Department of Justice at the same time, yet he was able to deliver top-notch work for me too. I think this suggests he is a hard worker and someone who can manage his time and work quickly when necessary.

Akiva worked with me on a project about the original jurisdiction of state supreme courts. Among other things, I asked him to read and categorize dozens of cases across a range of topics. His work was detailed oriented and precise. He also generated a number of interesting theoretical questions, which was not even part of his assignment. I absolutely would hire him again.

Background and Future Plans

Akiva is a strong student and will make an excellent lawyer, but he is so much more than that. I have had the pleasure of many conversations with Akiva, and he consistently has showed himself to be a serious, compassionate, and thoughtful person. For example, Akiva has worked in many capacities around disability, and he is passionate about disability rights. This is reflected in his work at the Department of Justice as well as in many more personal experiences that would not appear on a resume. If you have the chance to meet him, I hope you can discuss them.

Akiva brought the same passion and care to a far less heartwarming topic: law review. Akiva spoke more highly about bluebooking than any law student I have met. It is a good fit with his attention to detail. He also, rightly in my view, observed that getting the style right is important to ensure that the substance is clearly communicated. His focus on details is also why I think he connected with the material in civil procedure.

Looking ahead, Akiva sees a clerkship as an important part of his legal career. He is interested in the learning experience of a clerkship, and in the exposure it will give him to a variety of issues and areas of law. And, of course, he sees a clerkship as public service, and he is very much a public-interested person.

Finally, I should say again that Akiva is simply a wonderful person. He is polite, considerate, and thoughtful—all of the things I’d want in a colleague (and a friend). Akiva does not leave his heart at the door. It was clear to me that he cared about the law for its

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own sake but also because of its capacity to do justice (or not). He liked the intricacies of Federal Rule 4, but he also wanted to know what happened to the plaintiff when the case was over. Akiva will be a great clerk and a great lawyer, and he is already a great person. I recommend him strongly.

Thank you for your time and attention. If you have any questions, please do not hesitate to reach out to me any time at 858-405-5485 (cell) or zclopton@law.northwestern.edu.

Respectfully,

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AKIVA FRISHMAN

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WRITING SAMPLE

This writing sample is an excerpt from a brief I wrote for my Appellate Advocacy seminar.

While based on actual events, the individuals named in the brief are fictitious.

STATEMENT OF THE CASE

This is an appeal from a conviction of capital murder in Criminal Court Number 1 of Dallas County. *State of Texas v. Lev Orlov*, CR-14-12345 (October 15, 2016). Mr. Orlov appealed his conviction on October 27, 2016. R.237. The Fifth Court of Appeals affirmed the trial court ruling on January 20, 2018. R.238. Appellant, Mr. Orlov, asks this Court to reverse the lower courts' holdings.

ISSUE PRESENTED

In *Miranda*, the Supreme Court ruled that police must advise suspects of their constitutional rights prior to any interrogation. The ruling excludes only a narrow set of questions, generally related to basic biographical information, deemed necessary for police's administrative purposes. Does that limited exception allow a police officer to ask a suspect "Have you ever assaulted or battered anyone?" without advising them that the state will use their response against them?

STATEMENT OF FACTS

Mr. Lev Orlov, a Russian native, immigrated to the United States in 2005. R.6. Three years later, he met Ms. Maria Orlov, and the two married in 2010. R.6. The couple has a three-year-old child. R.23. Mr. Orlov struggles to communicate in English. R.6. His wife testified that her husband communicates with his mother, father, child and friends only in Russian. R.6.

On August 29, 2015, Mr. Orlov travelled from Dallas to Chicago to visit his mother-in-law. R.23. Dallas police officers wished to speak with Mr. Orlov about a car associated with him, that was found in an area near the location where someone had died. R.21. On August 30, 2015, the Dallas police contacted detectives in Chicago, seeking assistance in locating Mr. Orlov. R.21. They informed the Chicago detectives that a BMW was missing from the area where the

aforementioned individual had died. R.21. On August 30, 2015, Chicago police confronted Mr. Orlov at his friend's home. R.22. The officers arrested Mr. Orlov in connection with the discovered vehicle and brought him to the police station. R.22. Police interrogators then interviewed Mr. Orlov three times over the course of two days, all without an attorney present or translator present. R.22.

On September 1, 2023, Det. Young transported Mr. Orlov from Chicago to Dallas, Texas. R.199. Mr. Orlov arrived in Dallas and spent the night in jail. R.152. The next day, Deputy Coleen Early entered the housing unit and called Mr. Orlov "off to the side." R.152. There is no recording of the interrogation, and neither an attorney nor an interpreter was present. R.83–85. This marked the second time that Mr. Orlov was "processed," R.22, and at least the fourth time that an officer asked him questions at a police station. R.22; R.23; R.26. Deputy Early did not advise Mr. Orlov that his responses were voluntary. R.84. Deputy Early asked Mr. Orlov questions about his criminal history. R.84. Deputy Early, in her testimony, claims that she asks every inmate these questions and reads directly from a standardized form. R.206–08. However, in Mr. Orlov's case, Deputy Early's questions deviated from the form's text. R.84. Specifically, the form asks, "Have you *ever* assaulted or battered anyone?" R.209 (emphasis added). Yet, Deputy Early, in the recorded interview conducted a few days after her questioning, testified that she asked Mr. Orlov "Have you assaulted or battered anyone?" R.84. Deputy Early reported that, in response to her assault or battery question, Mr. Orlov "spontaneously" volunteered information, including additional details about the time and manner that the incident occurred. R.206–08. Mr. Orlov replied only "yes" or "no" to all other questions. R.210.

SUMMARY OF THE ARGUMENT

Mr. Orlov was convicted of murder, based in part on the prosecution's evidence which it obtained in violation of Mr. Orlov's *Miranda* rights. The prosecution relied on Mr. Orlov's statements to Dallas Police Department's Deputy Early. Deputy Early interrogated Mr. Orlov when she asked him a question that she should have known was likely to elicit an incriminating response. That question failed to qualify for the narrow "booking exception," because it was unrelated to basic biographical information and served no legitimate administrative interest. Because Deputy Early failed to advise Mr. Orlov of his *Miranda* rights prior to this interrogation, the trial court erred in admitting them. This Court should therefore reverse the trial judge's ruling.

ARGUMENT

I. Deputy Early Violated Mr. Orlov's *Miranda* Rights When She Interrogated Him Without Telling Him That the State Would Use His Response Against Him

A. Standard of Review

In assessing a trial court's ruling on a *Miranda*-violation claim, an appellate court reviews the decision under a bifurcated standard. *Alford v. State*, 358 S.W.3d 647, 652 (Tex. Crim. App. 2012). The decision as to whether custodial questioning constitutes "interrogation" under *Miranda* is a mixed question of law and fact. *Id.* In this case, the Court should review the trial judge's ruling *de novo*. Here, both parties agree as to the factual circumstances—i.e. the content of the question, where it occurred etc.—surrounding the question, and thus the question does not turn on issues of witness credibility or demeanor. The only remaining issue is whether that set of historical facts constitutes custodial interrogation under the Fifth Amendment. Such an inquiry requires the application of legal principles to a specific set of facts, an assessment entitled to *de novo* review. *Alford* at 653.

The trial judge considered whether Deputy Early's questioning legally constituted interrogation. R.229. In making that determination, the judge noted that Deputy Early was not acting as a detective and that the question appeared on a routine form. R.229. The trial judge also highlighted that the questioning did not seek information "simply limited to the nature of classification." R.229. However, the trial judge ultimately ruled that such questioning did not legally constitute interrogation. R.229.

The trial judge made a legal error in failing to consider additional factors that impact whether the questioning amounted to interrogation. For example, the court apparently did not examine the relationship between the administrative question and Mr. Orlov's underlying offense. Nor did the trial judge assess the circumstances in which the question was asked, particularly the fact that Mr. Orlov had already been processed and interrogated on prior occasions. Finally, the trial judge gave insufficient weight to the fact that Deputy Early's question did not seek basic biographical information, indicating that it was interrogation not administrative questioning.

B. Deputy Early's Question Constituted Custodial Interrogation

The State cannot rely on Mr. Orlov's statements to Deputy Early, which he provided without knowing that they would be used against him. The *Miranda* rule prohibits the admission of evidence that was obtained during a custodial interrogation in which the police failed to inform the suspect of their rights to remain silent and consult with an attorney during questioning. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). The Supreme Court, in *Rhode Island v. Innis*, defined "custodial interrogation" as "words or actions on the part of police (other than those normally attendant to arrest and custody) that the police *should know are reasonably likely to elicit an incriminating response*." 446 U.S. 291, 300 (1980) (emphasis added). In *Pennsylvania v. Muniz*, a plurality of the Supreme Court held that questions regarding the defendant's "name, address,

height, weight, eye color, date of birth” were admissible. 496 U.S. 582, 602 (1990). The plurality reasoned that these questions fell within the “routine booking exception” which exempts from *Miranda* only a limited set of “questions to secure the biographical data necessary to complete booking or pretrial services.” *Id.*

Similarly, in *State v. Cruz*, this Court explained that *Muniz* and *Innis* together exempt only two types of questions from *Miranda*:¹ 1) questions that fail the “should know test” or where an officer should have known that a question was reasonably likely to elicit an incriminating response, and 2) questions that reasonably relate to a legitimate administrative concern. 461 S.W.3d 531, 537–38 (Tex. Crim. App. 2015). This Court explained that each category must be analyzed separately. *Id.* at 538.

1. Deputy Early Should Have Known That her Question Was Reasonably Likely to Elicit an Incriminating Response

Prior to interrogating Mr. Orlov, Deputy Early reviewed Mr. Orlov’s charging documents and learned that he had been arrested for murder. R.212. She then asked Mr. Orlov “Whether he ever assaulted or battered anyone?” R.84. Deputy Early’s own knowledge of the underlying offense is important in evaluating whether she should have known that a question was reasonably likely to elicit an incriminating response. In *U.S. v. Arrelano-Banuelos*, the Fifth Circuit considered the officer’s knowledge of the defendant’s arrest record and its relevance to the underlying questioning. There, like Deputy Early, the officer reviewed the defendant’s file prior to questioning. 912 F.3d 862, 866 (5th Cir. 2019). The court reversed the trial court’s ruling, which found the questions merely “administrative,” and disregarded the officer’s subjective knowledge.

¹ This Court, in *Cruz*, appeared to elaborate on its decision in *State v. Alford*. There the Court held that if the question was “related to police’s legitimate administrative concerns,” it qualified for the booking exception regardless of whether the officer “should have known” that it was likely to elicit an incriminating response. 358 S.W.3d 647, 652 (Tex. Crim. App. 2012). To the extent any tension exists between the two holdings, Appellant considers *Cruz*, the more recent decision, binding.

Id. The court held that, given the information in the defendant’s file, the officer “should have known that his questioning was likely to elicit an incriminating response.” *Id.*

Further, in *State v. Cain*, the defendant was arrested for a drug-related offense. 2005 WL 598791 at *2. Like Mr. Orlov, the defendant there was “put through the booking procedures,” and was also asked questions by a booking officer. *Id.* at *6. Reading from a booking form, the officer asked the defendant “whether he had used any drugs that day?” The Iowa appellate court ruled that the question did not qualify for the booking exception. *Id.* It reasoned that the officer should have known that the question was “relevant to the substantive offense,” and thereby required *Miranda* warnings. *Id.*

Deputy Early’s question was not only relevant to the underlying offense, but directly implicated it. Assault and battery are core elements of murder, inseparably interwoven with one another. Only in the most extreme cases—if any—can a defendant be guilty of murder without also committing lesser assault offenses. Thus, given Deputy Early’s knowledge of the underlying charge and its relevance to a question about assault and battery, she should have known that it would elicit an incriminating response. *See also U.S. v. Reyes*, 225 F.3d 71, 77 (1st Cir. 2000) (finding that where the question was “so clearly and directly linked to the suspected offense...we would expect a reasonable officer to foresee that his questions might elicit an incriminating response”).

The danger of the state’s question is evident in how easily it can transform from an inquiry into past behavior to interrogation into the underlying offense. According to her own report, Deputy Early asked Mr. Orlov if he “assaulted or battered anyone.” R.84. She excluded the key word “ever,” the only thing distinguishing an inquiry into *prior* assaultive behavior from interrogation into the underlying crime. A native speaker would struggle to grasp that nuance; Mr.

Orlov’s rudimentary English skills made it impossible. Eight months after the interrogation, at the suppression hearing, Deputy Early claimed that she read directly from the form, and therefore included the word “ever.” Regardless, however, that the question morphs into interrogation with the absence of a single word demonstrates its likelihood to elicit an incriminating offense.

Finally, a “reasonable, objective observer” recognizes that the question itself would elicit an incriminating response. *See U.S. v. Hendrix*, 509 F.3d 362, 374 (7th Cir. 2007). (“[T]he test is whether a reasonable objective observer...”).² By definition “Have you assaulted or battered anyone?” demands an incriminating response because it explicitly seeks incriminating information. “Assault” and “battery” are *crimes*, not mere nouns. Thus, any affirmative response to such a question would be, by definition, incriminating.

Because Deputy Early asked Mr. Orlov a question that she knew was clearly and directly linked to the murder charge he faced, a reasonable objective observer could only conclude that she knew it would elicit an incriminating response. Because she did not provide him with *Miranda* warnings, any statements she obtained were unlawfully obtained. This Court should find the trial court erred in admitting these statements.

2. The Question “Have You Ever Assaulted or Battered Anyone?” Does Not Qualify for the “Legitimate Administrative Interest” Exception, a Category Generally Reserved for Basic Biographical Information

² *U.S. v. Hendrix*, (“Under our interpretation of *Innis*, the test is whether a reasonable objective observer would have believed that the law enforcement officer’s statements to the defendant were reasonably likely to elicit an incriminating response.”); *See also State v. Fischer*, 656 N.W.2d 503, 510 (Wis. Ct. App. 2003). (“This language implies an objective foreseeability test, i.e., whether an objective observer could foresee that the officer’s conduct or words would elicit an incriminating response.”); *Rosa v. McCray*, 396 F.3d 210, 222 (2d Cir. 2005) (“To determine whether the police abused the gathering of pedigree information in a manner that compels *Miranda* protection requires an objective inquiry: Should the police have known that asking the pedigree questions would elicit incriminating information? The test is objective. The subjective intent of the agent is relevant but not conclusive.”); *U.S. v. Sanchez*, 13 F.4th 1063, 1074 (10th Cir. 2021) (“This inquiry is objective, focusing on the perceptions of a reasonable person in the suspect’s position rather than the intent of the investigating officer.”)

In *Pennsylvania v. Muniz* a plurality of the Supreme Court held that *Miranda* protections did not reach a narrow set of questions “related to the police’s administrative concerns.” 496 U.S. 582, 602 (1990) Similarly, in *Alford*, this Court held that *Miranda* did not apply to “question[s] reasonably relate[d] to a legitimate, administrative concern.” 358 S.W.3d 647, 660 (Tex. Crim. App. 2012). In assessing a “legitimate, administrative concern,” courts cannot “look solely” to the content of the question, but must also consider “the circumstances in which the question is asked.” *Cruz* at 541.

i. This Court Should Explicitly Cabin the “Legitimate Administrative Interest” to Requests for Basic Biographical Information

In *Muniz*, the origin of the “booking question” exception, the officer asked the defendant a total of eight questions: his name, address, height, weight, eye color, date of birth, current age and the date of his sixth birthday. *Muniz* at 590. The Supreme Court held that the last question—the date of his sixth birthday—required *Miranda* warnings but the other seven did not. *Id.* at 601. It stressed that the first seven were admissible because they “fall within a routine booking question exception which exempts from *Miranda*’s coverage questions to secure the biographical data necessary to complete booking or pretrial services.” *Id.* It further noted the trial court’s determination that such questions were “requested for record-keeping purposes only.” *Id.* Thus, the *Muniz* Court expressly characterized the exception not as applying to questions related to any conceivable police interest, but rather only those that relate to basic biographical information for record-keeping purposes.

And similarly, in *Cruz*, this Court stressed that “[t]he types of questions that are allowed under this exception are generally requests for biographical data, such as name, address, height, weight, eye color, date of birth and current age.” *Cruz* at 537. It noted that some courts expand that category slightly further and allow questions regarding a suspect’s telephone number. *Id.* This

Court reasoned that “biographical data was so innocuous” that it qualified as an administrative interest, suggesting that the exception typically only extends to harmless, identifying information.

Id.

And while this Court in *Alford* applied the exception to a question asked during the inventory process, it nevertheless suggested that the paradigmatic question was one related to basic biographical information. There the Court justified the administrative exception, noting that “courts cannot ask law-enforcement agents to forgo all routine procedures and detain an individual without knowing anything about him, not even what to call him in the jail log.” *Alford* at 661 (quoting *U.S. v. Reyes*, 225 F.3d 71,77 (1st Cir. 2000)). Deputy Early’s question “Have you ever assaulted or battered anyone?” bears no resemblance to requests for basic biographical data, and therefore should not be considered a “legitimate administrative interest.”

The Maryland Supreme Court, in *State v. Hughes*, a case this Court looked to in formulating the administrative inquiry in *Cruz*, explicitly cabined the booking exception to requests for basic biographical information.³ 695 A.2d 132, 139 (Md. 1997). The *Hughes* court explained that “*in order for this exception to apply...the questions must be directed toward securing ‘simple identification information of the most basic sort;’ that is to say only questions aimed at accumulating ‘basic identifying data required for booking and arraignment....Examples of questions to which the routine booking question exception will ordinarily extend include the suspect’s name, address, telephone number, age, date of birth, and similar such pedigree*

³ Georgia courts similarly limit the exception to basic biographical information. *See State v. Nash*, 619 S.E.2d 684, 687 (Ga. 2005) (“Georgia courts have confined the booking exception to requests for basic biographical data such as the suspect’s name, age, address, educational background, marital status, and other information required to complete an arrest form....”). *See also People v. Elizalde*, 351 P.3d 1010, 1018 (Cal. Sup. Ct. 2015) (while the California court does not establish a basic biographical qualification, it nevertheless stressed that, “[w]hen booking questions go beyond the basic biographical data contemplated in *Muniz*, the core concerns of *Miranda* and *Innis* are implicated”).

information.” (emphasis added). *Id.* at 140. Under the *Hughes* standard, the question must at the very minimum request only basic biographical information.

The facts in *Hughes* are also almost identical to those in this case. There, the defendant was arrested on suspected drug distribution charges. *Id.* at 134. The police brought the defendant to the station for post-arrest processing. *Id.* Like Deputy Early, the police officer in *Hughes* also asked questions from a “standard” form. *Id.* There, the form also sought information implicating the underlying offense, seeking “Whether the arrestee is a narcotic or drug user?” *Id.* Like Mr. Orlov, the defendant’s response to the question was also used against him.⁴ *Id.* Maryland also argued that the question was required to ensure jailhouse safety, and that police asked it of “every arrestee, regardless of charge.” *Id.* Nevertheless, because the question did not—at a minimum—relate to basic biographical information, the court held that the police were required to provide *Miranda* warnings.⁵ *Id.* This Court should again look to *Hughes* and suppress Deputy Early’s question, because “Have you ever assaulted or battered anyone?” like “Are you a narcotic or drug user?” seeks information far beyond basic biographical data and therefore should not qualify as a “legitimate administrative interest.”

In adopting the *Hughes* formulation, this Court would also establish a coherent limiting principle. True, no bright-line rule could reach every possible situation; one could imagine that questions that seek information related to things like hair color, current place of employment, or emergency contact number might fall near the border. However, such inquiries are categorically distinct from questions regarding a suspect’s criminal behavior.

⁴ The *Hughes* defendant responded “no,” an answer that was later used against him to support that state’s argument that the defendant intended to distribute, not use, the drugs the officers found in his possession. *Id.* at 135.

⁵ Maryland still subjects requests for basic biographical information to the “should know” test, and thus even questions regarding a suspect’s name might require *Miranda*. This Court can either adopt that approach and retain *Cruz*’s “circumstances in which the question is asked” or pivot to *Alford* and allow all requests for basic biographical information.

In contrast, an undefined “legitimate administrative interest” would permit the police, as in this case, to ask *any* question so long as they can later point to some administrative rationale. For example, the police admittedly have a “legitimate administrative interest” in ensuring that inmates do not steal from one another. An undefined booking exception would then allow officers to ask a robbery suspect “Whether you ever stole anything?” Indeed, that underlying interest would not distinguish between past and current thievery, and thus “Whether you stole anything today?” under the current formulation, would also be acceptable. The officers in Mr. Orlov’s case would similarly find little difficulty in justifying “Have you killed anyone in the past week?” under the undefined “legitimate administrative interest” inquiry.

The plurality in *Muniz* envisioned a narrow and defined exception to *Miranda*, one that permitted the police to request basic biographical information necessary for record-keeping purposes. It therefore carved out limited space for inquiries into a suspect’s name, date of birth, height, weight, eye color, and similar pedigree information. This Court likewise intended the exception to apply only to “innocuous” inquiries like identifying data, not any conceivable police interest. This Court should thus adopt the approach of sister courts and explicitly cabin the “legitimate administrative inquiry” to requests for basic biographical data.

ii. Even Under A Standard That Permits Non-Biographical Questions, “Have You Ever Assaulted or Battered Anyone?” Still Falls Outside the Scope of the “Legitimate Administrative Interest” Inquiry

First, “Have you ever assaulted or battered anyone?” lacks any reliable precedent in administrative exception caselaw.⁶ Gang-affiliation questions are the only ones bearing any

⁶ The majority of administrative exception cases are either explicitly related to biographical or quasi-biographical data. *See, e.g., Cruz* (discussing a cell-phone number); *Schreyer v. State*, 2005 WL 1793193 *13 (Tex. App. Dallas 2005); (allowing questions in furtherance of obtaining a suspect’s real name); *U.S. v. Tryals*, 525 Fed. Appx. 554, 556 (9th Cir. 2013) (finding questions regarding aliases and place of birth covered within exception); *U.S. v. Duarte*, 160 F.3d 80, 81 (1st Cir. 1998) (finding that questions related to a suspect’s employment were covered under the booking questions). While a single case, *People v. Guilfoyle*, from a California appeals court touches on an arguably

resemblance to the question here—in the sense that both are allegedly justified on vague “safety” grounds—and even those were struck down by the Ninth Circuit. *U.S. v. Williams*, 842 F.3d 1143, 1147 (9th Cir. 2016). While this Court, in an unpublished opinion with “no precedential value,” permitted a gang-related question in *Ramirez v. State*, it later conceded that it “did not address the issue of whether the question was likely to elicit an incriminating response.” *Alford* at 656. Further, criminal history inquiries will not yield any of the supposed benefits of gang-related questions, suggesting that they will not actually serve an administrative interest. Assault and battery, unlike gang affiliation, are themselves crimes, minimizing the likelihood that suspects will answer the questions truthfully. Suspects also gain nothing by disclosing their crimes, whereas sharing their gang affiliation, a cell-assignment classifier, earns protection and comradery.

Further, in assessing a “legitimate, administrative concern,” courts “cannot look solely” to the content of the question, but must also consider “the circumstances in which the question is asked.” *Cruz* at 541. This Court provided a range of factors to determine whether, under the “totality of the circumstances,” an officer’s questions truly qualifies for the exception. *Id.*

Courts consider the relationship between the question asked and the crime the defendant was suspected of committing. *Id.* As explained above, questions regarding assault and battery necessarily implicated Mr. Orlov’s underlying murder charge. Further, the “knowledge and intent of the government agent asking the question[]” is also important in assessing the question’s exception eligibility. *Id.* Again, Deputy Orlov read Mr. Orlov’s file prior to interrogating him, and knew that he faced murder charges. R.212.

similar topic, the facts are distinct from those in Mr. Orlov’s case. 2010 WL 3760246 *20 (Cal. App. 6th 2010). There, the court allowed the question, “Do you have any bizarre or aggressive behaviors?” However, it reasoned that the “question was [not] so closely connected to the crimes under investigation,” and was asked in order to determine whether the suspect required counseling. *Id.*

The location of the questioning, and whether it was conducted during a non-investigative booking process could also be relevant to the inquiry. *Id.* Here, Deputy Early entered the inmate housing unit and called Mr. Orlov “off to the side.” R.152. Thus, the record indicates that Deputy Early interrogated Mr. Orlov near his cell, not in a clerical processing room. And further, Chicago police had already processed Mr. Orlov, R.22, giving him little reason to believe that these were clerical questions and not an extension of his earlier interrogations. Indeed, by the time Deputy Early interrogated Mr. Orlov, he had already been questioned three times by agents of two states, and flown across the country with a detective, obscuring any formal distinction between officers’ official roles or police questioning procedures. Finally, given its inherent relationship to criminal conduct, the fact that a question about assault and battery appeared on a standard form should not alter the calculus. *See U.S. v. Williams* at 1148 (“[T]he government’s assertion that such questions are posed routinely... does not alter our conclusion.”)

Deputy Early’s question, “Have you ever assaulted or battered anyone?” bears no resemblance to requests for basic biographical information like a suspect’s name, weight, age, and height. It therefore falls outside the narrow scope of administrative questions that the *Muniz* court held were not subject to *Miranda* requirements. Further, the circumstances surrounding the question, including its relationship to the underlying offense and Deputy Early’s knowledge of that fact, demonstrate that the question served no legitimate administrative interest. Because Deputy Early should have known that the question was likely to elicit an incriminating response, and because that question served no legitimate administrative interest, the trial court erred in allowing it.

CONCLUSION

Miranda provides a suspect with a few, limited rights that protect them from the power imbalance inherent in police interrogation. The case stands for the simple proposition that “if the state wishe[s] to convict and punish an individual, it must produce the evidence against him by the independent labor of its officers, not by the simple, cruel expedient of forcing it from his own lips.” *U.S. v. Mandujano*, 426 U.S. 564, 579 (1976), (Brennan, J. concurring). But for such a rule to achieve its purpose, it demands the state’s genuine observance, not feigned compliance. In this case, the state manipulated a narrow booking exception intended only for basic biographical information to ask questions inseparably interwoven with the underlying crime. This Court should suppress Mr. Orlov’s statements under these circumstances because they violated *Miranda*’s protections against self-incrimination.

Applicant Details

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 Date of BA/BS **April 2017**
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 Date of JD/LLB **May 25, 2023**
 Class Rank **School does not rank**
 Law Review/Journal **Yes**
 Journal(s) **Northwestern Journal of Law and Social Policy**
 Moot Court Experience **Yes**
 Moot Court Name(s) **William E. McGee National Civil Rights Moot Court Competition**

Bar Admission

Prior Judicial Experience

Judicial
Internships/ **Yes**
Externships
Post-graduate
Judicial Law **Yes**
Clerk

Specialized Work Experience

Professional Organization

Organizations **Just the Beginning Organization - Associate Board
Member and Volunteer Mentor (Spring 2021-
Present)**

Recommenders

Nzelibe, Jide
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**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

CLARISSA GALAVIZ

11 West Division Street #405, Chicago, IL 60610 | 602-391-4334 | clarissa@nlaw.northwestern.edu

May 30, 2023

Judge Jamar K. Walker
United States District Court, Eastern District of Virginia
600 Granby Street
Norfolk, Virginia 23510-1915

Dear Judge Walker:

Enclosed, please find an application for a clerkship in your chambers for the 2024-25 term. I am a class of 2023 law student at Northwestern Pritzker School of Law in. A clerkship in your chambers would provide an invaluable opportunity to continue exposing myself to new areas of the law, develop litigation skills, and broaden my understanding of judicial decision-making in preparation for my legal career. As I start my career, I am committed to litigation work and look forward to learning and being challenged as a clerk. I will be clerking for Hon. Rebecca B. Connelly in the U.S. Bankruptcy Court for the Western District of Virginia for the 2023-24 term. During the clerkship, I look forward to learning and developing my research, writing, and analytical skills. In addition, I am committed to public service. The latter is exemplified by winning the David S. Ruder Prize at Northwestern, recognizing me for my graduating class's highest public service hours.

My law school and work experience have equipped me with experience that will serve me well as a law clerk in your chambers. For example, in 2021, I spent my summer interning at Federal Defender Services of Wisconsin, where I assisted in researching and drafting memoranda and compassionate release petitions. In the Fall, I externed at the DHS Office of the Legal Principal Advisor in Chicago, where I drafted memoranda and a BIA brief. In addition, I took Judicial Writing as an elective, reaffirming my interest in pursuing a clerkship. When I was a summer associate at Fredrikson & Byron, I worked on assignments that included employment and business litigation, and pro bono projects. I have a student essay published this Spring in the Journal of Law and Social Policy, for which I served as the Symposium & External Relations Editor. In addition, I presented my research in February as a selected Salzburg Cutler Fellow in D.C., and my research has been published as an article in the Northwestern Journal of International Law and Business this May. I also participated in the William E. McGee National Civil Rights Moot Court Competition in March 2023. Furthermore, I have worked at the Wrongful Convictions Clinic at Northwestern, where I honed my litigation and advocacy skills this Fall. Lastly, I am glad to share I worked as a judicial extern for Judge Pamela McLean Meyerson this Spring in the Circuit Court of Cook County, Chancery Division.

My application includes a resume, transcript, a writing sample (self-edited), and letters of recommendation.

I would welcome the opportunity to interview with you to discuss my qualifications and interest in the position. I appreciate your consideration.

Respectfully,
Clarissa Galaviz

CLARISSA GALAVIZ

Chicago, IL 60610 • clarissa@nlaw.northwestern.edu • 602.391.4334

EDUCATION

Northwestern Pritzker School of Law, Chicago, IL

Candidate for Juris Doctor, May 2023

- AALS Pro Bono Honor Roll; David S. Ruder Prize; Dean's List; Gladys & Virginia Janson Scholarship; Hispanic Scholarship Fund Scholar; Just the Beginning - A Pipeline Organization 12th National Conference Scholarship; 2023 Graduation Service Award Nominee; Salzburg Cutler Fellow
- JOURNAL OF LAW AND SOCIAL POLICY, Symposium & External Relations Editor
- *Publications*: "Submission of Amici Briefs in Arbitration Related to Environmental Concerns: Developing a Better Framework for Their Consideration Under ICSID Rule 37(2)," 3 NW. J. INT'L L. & BUS. 219 (2023) ; "Healthcare Shortages During a Pandemic: A Story Not Unfamiliar to Tribes;" 18 NW. J. OF L. & SOC. POL'Y BLOG (2023).
- Teaching Assistant to Professor Monica Llorente (Business Associations, Spring 2023)
- Teaching Assistant to Professor Daniel Linna (Law and the Governance of Artificial Intelligence, Fall 2022)
- Teaching Assistant to Professors Paul Gowder and James Speta (Torts, Spring 2022 & Fall 2022)
- Research Assistant to Professors David Schwartz & Jamelia Morgan
- Collaboration for Justice, Co-President; Diversity Coalition, Vice-President of Finance & Mentor; Latinx Law Students Association; Moot Court Society, Competitor; OUTLaw; Women's Leadership Coalition, Mentor

Grand Canyon University, Phoenix, AZ

Bachelor of Arts in Communications and Digital Film, Honors College, summa cum laude, April 2017

- 30 Under 30 Honoree; Chancellor Award; Guild Award; President's List; Washington Media Fellow

EXPERIENCE

Hon. Rebecca B. Connelly, U.S. Bankruptcy Court for the Western District of Virginia, Harrisonburg, VA

Judicial Clerk, expected August 2023–August 2024

Hon. Pamela McLean Meyerson, Circuit Court of Cook County, Chancery Division, Chicago, IL

Judicial Extern, January 2023–April 2023

Drafted memoranda for guidance of opinions concerning civil litigation, including decisions on motions for summary judgment and petitions for relief. Conducted legal and factual research, and observed court proceedings for chancery cases, including employment, criminal, intellectual property, bankruptcy, contract and business law litigation.

Bluhm Legal Clinic - Center on Wrongful Convictions, Chicago, IL

Student Attorney (law student temporarily licensed in Illinois and Minnesota), September 2022–January 2023

Assisted attorneys with the preparation of oral arguments, legal and factual research, and drafting of clemency and certificate of innocence petitions. Researched and drafted an amicus curiae brief in collaboration with the Center for International Human Rights. Participated in developing client advocacy, case strategy, and witness preparation.

Fredrikson & Byron, Minneapolis, MN

Summer Associate (return offer extended), May 2022–July 2022

Drafted and edited sections of briefs, motions, and jury instructions for business litigation cases. Prepared research memoranda and client communications related to issues of administrative law, bankruptcy litigation, business tax, trust litigation, and employment litigation. Conducted healthcare M&A due diligence and employment litigation discovery. Wrote pro bono conciliation court opinions and reviewed pro bono contract for a small business owner.

U.S. Department of Homeland Security, Chicago, IL

Legal Extern, Office of the Principal Legal Advisor, September 2021–December 2021

Observed court proceedings and assisted attorneys in trial preparation in immigration, customs, worksite enforcement, employment law, and administrative law cases. Researched and drafted memoranda, briefs, motions, and case notes.

Federal Defender Services of Wisconsin, Milwaukee, WI

Federal Defender Summer Intern, May 2021–August 2021

Assisted with research, client counseling, and drafting and editing briefs, motions, and sentencing memoranda. Helped craft case strategies. Assisted with preparation for and observed motion hearings and sentencings.

ADDITIONAL INFORMATION

Language Skills: Native Spanish speaker

Community Involvement: Just the Beginning, A Pipeline Organization – Associate Board Member and Mentor

Interests: Photography, youth development and conservation volunteering, singing, hiking, Marvel and DC comics

Northwestern University
633 Clark Street
Evanston, IL 60208
United States

Name: Galaviz Lizarraga, Clarissa
Student ID: 3293431

Page 1 of 3

Law Unofficial Transcript

Print Date: 2023-02-03

Staff Member, Journal of Law and Social Policy, (2021-22)

Academic Program History

Program: Juris Doctor
07/30/2020: Active in Program

Beginning of Law Record

2020 Fall (08/24/2020 - 12/17/2020)

Course	Description	Attempted	Earned	Grade	Points
BUSCOM 510	Contracts 1L required course (not CLR) Evaluated non-enrollment section in Blue First Year Students only Registrar enrollment; not a biddable class Business/Corporate transactions an element Contracts Practice Area an element of course Synchronous:Class meets remotely at scheduled time Instructor: Heidi Kitrosser	3.000	3.000	B+	9.990
CRIM 520	Criminal Law 1L required course (not CLR) First Year Students only Registrar enrollment; not a biddable class Synchronous:Class meets remotely at scheduled time Criminal Law and Procedure Practice Area Synchronous:Class meets remotely at scheduled time Instructor: Janice Nadler	3.000	3.000	B	9.000
LAWSTUDY 540	Communication & Legal Reasoning 1L CLR Course First Year Students only Registrar enrollment; not a biddable class Synchronous:Class meets remotely at scheduled time Synchronous:Class meets remotely at scheduled time Instructor: Martha Kanter	2.000	2.000	B	6.000
LITARB 530	Civil Procedure 1L required course (not CLR) Evaluated non-enrollment section in Blue First Year Students only Registrar enrollment; not a biddable class Civil Litigation & Dispute Resolution Procedure Practice Area present in course Instructor: James Pfander	3.000	3.000	B	9.000
PPTYTORT 550	Torts 1L required course (not CLR) Evaluated primarily by exam Evaluated non-enrollment section in Blue First Year Students only Registrar enrollment; not a biddable class Tort & Personal Injury Law Instructor: Clifford Zimmerman	3.000	3.000	B+	9.990
Term GPA	3.141 Term Totals	14.000	14.000	14.000	43.980

Cum GPA 3.141 Cum Totals 14.000 14.000 14.000 43.980

2021 Spring (01/11/2021 - 05/06/2021)

Course	Description	Attempted	Earned	Grade	Points
CONPUB 500	Constitutional Law 1L required course (not CLR) First Year Students only Registrar enrollment; not a biddable class Constitutional Law or Procedure an element Synchronous:Class meets remotely at scheduled time Instructor: Heidi Kitrosser	3.000	3.000	B	9.000
CONPUB 633	American Indian Law Open to First Year Students Comparative Law Practice Area in course Constitutional Law or Procedure an element Law and Social Science present in course Synchronous:Class meets remotely at scheduled time Instructor: Clifford Zimmerman	3.000	3.000	A-	11.010
LAWSTUDY 541	Communication & Legal Reasoning 1L CLR Course First Year Students only Registrar enrollment; not a biddable class Synchronous:Class meets remotely at scheduled time Instructor: Martha Kanter	2.000	2.000	B	6.000
PPTYTORT 530	Property 1L required course (not CLR) First Year Students only Registrar enrollment; not a biddable class Intellectual Property Practice Area present Property Practice Area present in course Synchronous:Class meets remotely at scheduled time Instructor: Michael Barsa	3.000	3.000	B	9.000
PPTYTORT 625	Estates and Trusts Evaluated primarily by exam Recommended elective for JD students Open to First Year Students Family Law Practice Area in course Property Practice Area present in course Trusts and Estates Prac. Area present Hybrid: Remote component and in-person mtgs Instructor: Max Schanzenbach	3.000	3.000	B+	9.990
Term GPA	3.214 Term Totals	14.000	14.000	14.000	45.000
Cum GPA	3.178 Cum Totals	28.000	28.000	28.000	88.980

Northwestern University
633 Clark Street
Evanston, IL 60208
United States

Name: Galaviz Lizarraga, Clarissa
Student ID: 3293431

Page 2 of 3

Law Unofficial Transcript

2021 Fall (08/30/2021 - 12/16/2021)						2022 Spring (01/10/2022 - 05/05/2022)					
Course	Description	Attempted	Earned	Grade	Points	Course	Description	Attempted	Earned	Grade	Points
BUSCOM 601S	Business Associations	3.000	3.000	B	9.000	BUSCOM 638	Mergers and Acquisitions	3.000	3.000	B-	8.010
Course Attributes:	Evaluated primarily by exam Counts toward Business Enterprise Concentration Recommended elective for JD students Open to First Year Students Business/Corporate transactions an element Commercial and Bankruptcy Law Practice Area					Course Attributes:	Evaluated primarily by exam Counts toward Business Enterprise Concentration Business/Corporate transactions an element				
Instructor:	Carole Silver					Instructor:	Andre Fiebig				
BUSCOM 649	Accounting for Decision-Making	2.500	2.500	C	5.000	BUSCOM 706	International Investment	2.000	2.000	A	8.000
Course Attributes:	Counts toward Business Enterprise Concentration Co-listed with Kellogg School of Management Open to Tax LLMS Class dates follow University Quarter Schedule Business/Corporate transactions an element Commercial and Bankruptcy Law Practice Area					Course Attributes:	Satisfies Prof Writing degree req Business/Corporate transactions an element International Law PracticeArea in course				
Instructor:	Swaminathan Sridharan					Instructor:	Jide Nzeibe				
BUSCOM 690	Basic Federal Income Taxation	3.000	3.000	B	9.000	CONPUB 600	Administrative Law	3.000	3.000	B-	8.010
Course Attributes:	Evaluated primarily by exam Counts toward Business Enterprise Concentration Recommended elective for JD students Open to First Year Students Business/Corporate transactions an element Family Law Practice Area in course Taxation Practice Area present in course					Course Attributes:	Evaluated primarily by exam Appellate Law Concentration Required for Environmental Law Concentration Recommended elective for JD students Constitutional Law				
Instructor:	Emily Cauble					Instructor:	Yoon-Ho Lee				
CONPUB 656	Practicum: Civil Government	4.000	4.000	A	16.000	LAWSTUDY 647B	Authenticity in Legal Practice	3.000	3.000	A-	11.010
Course Attributes:	Registrar enrollment; not a biddable class Satisfies Experiential Learning degree req Students must receive prof permission to enroll Requires Practicum Placement Administrative Law and Government					Course Attributes:	Satisfies Research Writing degree req				
Instructor:	Maureen Stratton					Instructor:	Clifford Zimmerman				
LITARB 601	Legal Ethics & Prof'l Resp	3.000	3.000	A-	11.010	LITARB 740	Civil Rights Lawyering Seminar	3.000	3.000	A-	11.010
Course Attributes:	Meets Legal Ethics degree requirement					Course Attributes:	Satisfies Research Writing degree req Civil Litigation & Dispute Resolution				
Instructor:	Wendy Muchman					Instructor:	Leonard Rubinowitz				
		Attempted	Earned	GPA Units	Points			Attempted	Earned	GPA Units	Points
Term GPA	3.226 Term Totals	15.500	15.500	15.500	50.010	Term GPA	3.289 Term Totals	14.000	14.000	14.000	46.040
Cum GPA	3.195 Cum Totals	43.500	43.500	43.500	138.990	Cum GPA	3.222 Cum Totals	59.500	59.500	59.500	191.690
2022 Winter (12/17/2021 - 01/09/2022)											
Course	Description	Attempted	Earned	Grade	Points						
LAWSTUDY 696	ALW: Intro to Judicial Writing	2.000	2.000	B+	6.660						
Course Attributes:	Satisfies Experiential Learning degree req										
Instructor:	Janet Brown										
		Attempted	Earned	GPA Units	Points						
Term GPA	3.330 Term Totals	2.000	2.000	2.000	6.660						
Cum GPA	3.201 Cum Totals	45.500	45.500	45.500	145.650						

Northwestern University
633 Clark Street
Evanston, IL 60208
United States

Name: Galaviz Lizarraga, Clarissa
Student ID: 3293431

Page 3 of 3

Law Unofficial Transcript

2022 Fall (08/29/2022 - 12/15/2022)						2023 Spring (01/09/2023 - 05/04/2023)					
Course	Description	Attempted	Earned	Grade	Points	Course	Description	Attempted	Earned	Grade	Points
BUSCOM 633Z	St Tran: Financial Institutions	2.000	2.000	A	8.000	BUSCOM 665B	Bankruptcy	3.000	0.000		0.000
Course Attributes:	Counts toward Business Enterprise Concentration Satisfies Experiential Learning degree req Business/Corporate transactions an element Commercial and Bankruptcy Law Practice Area					Course Attributes:	Evaluated primarily by exam Counts toward Business Enterprise Concentration Business/Corporate transactions an element Banking Law and Regulation Practice Area Commercial and Bankruptcy Law Practice Area				
Instructor:	John Freechack					Instructor:	Lea Krivinkas				
LITARB 670	Negotiation	3.000	3.000	A-	11.010	CONPUB 647	Practicum: Judicial	4.000	0.000		0.000
Course Attributes:	First Class Attendance Required Satisfies Experiential Learning degree req Civil Litigation & Dispute Resolution					Course Attributes:	Appellate Law Concentration Registrar enrollment; not a biddable class Satisfies Experiential Learning degree req Counts toward Law and Social Policy Concentration Students must receive prof permission to enroll Requires Practicum Placement Constitutional Law or Procedure an element Civil Litigation & Dispute Resolution Procedure Practice Area present in course				
Instructor:	Annalise Buth					Instructor:	Cynthia Wilson				
LITARB 708	Clinic: Wrongful Convictions	4.000	4.000	A	16.000	CONPUB 765	Constitutional Controversy	3.000	0.000		0.000
Course Attributes:	Appellate Law Concentration Satisfies Experiential Learning degree req Counts toward Law and Social Policy Concentration Constitutional Law Constitutional Law or Procedure an element Criminal Law and Procedure Practice Area Civil Litigation & Dispute Resolution					Course Attributes:	Public Interest Jason DeSanto				
Instructor:	Steven Drizin					Instructor:	Perspectives on Lawyering	2.000	0.000		0.000
PPTYTORT 650	Intellectual Property	3.000	3.000	A-	11.010	LAWSTUDY 593	Wendy Muchman				
Course Attributes:	Evaluated primarily by exam Counts toward Business Enterprise Concentration Open to First Year Students Intellectual Property Practice Area present Property Practice Area present in course					Instructor:	Mary Foster				
Instructor:	David Schwartz										
		Attempted	Earned	GPA Units	Points			Attempted	Earned	GPA Units	Points
Term GPA	3.835 Term Totals	12.000	12.000	12.000	46.020	Term GPA	0.000 Term Totals	12.000	0.000	0.000	0.000
Cum GPA	3.325 Cum Totals	71.500	71.500	71.500	237.710	Cum GPA	3.334 Cum Totals	85.500	73.500	73.500	245.050
Term Honor: Dean's List						Law Career Totals					
						Cum GPA	3.334 Cum Totals	85.500	73.500	73.500	245.050

End of Law Unofficial Transcript

2023 Winter (12/16/2022 - 01/08/2023)					
Course	Description	Attempted	Earned	Grade	Points
LAWSTUDY 721	Leading in the Law	2.000	2.000	A-	7.340
Instructor:	Clifford Zimmerman Michael Durr II				
		Attempted	Earned	GPA Units	Points
Term GPA	3.670 Term Totals	2.000	2.000	2.000	7.340
Cum GPA	3.334 Cum Totals	73.500	73.500	73.500	245.050

NORTHWESTERN PRITZKER SCHOOL OF LAW

May 30, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am delighted to furnish this recommendation for Clarissa Galaviz, who was a student of mine in both the first-year contracts course and an international investment seminar at Northwestern Pritzker School of Law. I consider Clarissa to be an especially hardworking and intellectually curious student. She shows significant promise and I trust that she will eventually become a very strong litigator. I strongly recommend her application as a clerk in your chambers.

Upon joining my contracts class in the fall of 2020, Clarissa hit the ground running. Clarissa was always brimming with curiosity about the doctrinal nuances of contract law. Even though the class was conducted entirely on Zoom due to the Covid pandemic, Clarissa regularly attended the weekly online office hours throughout the semester. During classroom discussions, she was both invariably polite and concise in her comments. With respect to her final examination, Clarissa was able to identify most of the relevant legal themes we discussed in class and present her analysis in a very clear and persuasive manner. Although Clarissa earned a B+ in the course, it was only because she missed a few issues in an issue spotting exercise on the second exam question; otherwise, her ability to engage in in-depth analysis of the issues she covered was excellent.

Clarissa subsequently enrolled in a seminar I taught on international investment law in the spring of 2022. She was one of the three most active participants in classroom discussions. As part of a class assignment with another student, she did an hour-long presentation on the fair and equitable standard in investment treaty arbitration, which was one of the top three presentations in the class. Unsurprisingly, Clarissa completed the class with an A and wrote one of the strongest papers in the class. In her paper, she analyzed the merits of having third parties submit amicus briefs in investment arbitration disputes that implicate environmental issues. Overall, she demonstrated a keen interest in probing some of the legal and policy issues that underpin the pillars of the international investment system.

In addition to her classroom skills, Clarissa is also personable, kind, and has a good sense of humor. She is also self-disciplined and driven. At the Pritzker School of Law, she is the co-President of the Collaboration for Justice, Vice President of the Latinx Law Students Association, and an active member of both OUTLaw and the Women's Leadership Coalition. On top of all these various activities, she also serves as the Symposium and External Relations Editor of the Journal of Law and Social Policy. Prior to starting at Northwestern, she was a program service evaluator for the state of Arizona.

I enthusiastically recommend Clarissa's application as a clerk in your chambers.

Respectfully,

Jide Okechuku Nzelibe
Professor of Law
Affiliated Faculty, Ford Motor Company Center for Global Citizenship
Northwestern Pritzker School of Law

Jide Nzelibe - j-nzelibe@law.northwestern.edu - (312) 503-5295

NORTHWESTERN PRITZKER SCHOOL OF LAW

May 30, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to enthusiastically recommend Clarissa Galaviz Lizarraga for a judicial clerkship. Clarissa is an excellent student, who possesses the skills necessary to excel as a judicial clerk. She is deserving of your most serious consideration.

I know Clarissa as a bright and thoughtful student in my Civil Government Practicum course. The course explores legal representation in a civil government setting and requires that students work in a civil government placement and meet weekly in a seminar length classroom session. Students are also required to keep a weekly journal and give a class presentation linking their field work experience with class readings and discussions.

Clarissa worked in the Office of the Principal Legal Advisor, U.S. Department of Homeland Security and researched many complicated immigration issues during her externship. From class discussions and journal entries, I was impressed with her ability to quickly understand and clearly explain complicated issues. Clarissa has a logical and analytical mind, and the feedback I received from her supervisors at her placement confirmed that she performed at a high level and showed great aptitude in comprehending an incredibly complex area of law.

Clarissa's journal on her experiences at the placement and reflections on the class readings was well written and insightful. Her writing is clear, concise, and persuasive. In addition to her writing skills, she impressed me with her ability to problem solve difficult issues that arose during her externship. Her reflections and actions evidenced a mature, thoughtful approach to challenges.

In addition to my teaching duties, I also coordinate the law school's pro bono and public service program. Clarissa is one of the most dedicated volunteers I have ever met during my twenty years in this position. She has volunteered the highest number hours in her class and devotes much of her time helping underserved populations access the legal system through her work with the Asian Law Alliance and the International Refugee Assistance Project. She also spends a considerable amount of time mentoring through her work with Just the Beginning: A Pipeline Organization.

I know Clarissa to be an excellent student, with impressive analytical and writing skills. She has a commitment to public service and brings a desire for success to all her undertakings. In sum, Clarissa is an ideal candidate for a clerkship in your office. Please do not hesitate to contact me if you would like to discuss Clarissa's qualifications. I can be reached by telephone at 312-503-4558 or by e-mail at m-stratton@law.northwestern.edu.

Respectfully,

Maureen Stratton
Clinical Assistant Professor of Law
Pro Bono and Public Service Program Director
Northwestern Pritzker School of Law

Maureen Stratton - m-stratton@law.northwestern.edu - (312) 503-4558

NORTHWESTERN PRITZKER SCHOOL OF LAW

May 30, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing on behalf of Clarissa Galaviz Lizarraga, a Northwestern Pritzker Law School student who is applying for a clerkship with you. I am pleased to do so, because I think that Clarissa would be a fine judicial clerk.

Last Spring, Clarissa was in my Civil Rights Lawyering seminar with about 15 other students. The focus is on practice and strategy, rather than doctrine. In addition to the readings and class discussion, participants write two drafts of a paper on a topic of their choosing.

Clarissa was an important contributor to the class discussion. Her preparation was careful and thorough, and her comments and questions were always on point. Her level of engagement was consistently high.

Clarissa chose to focus her research on the remedial challenges involved in a decades long public housing desegregation case in Chicago. It is a complex case with many twists and turns in the remedial process. Clarissa did a nice job of sorting things out and exposing the dilemmas and challenges the court faced in trying to make changes on the ground, once the violation was established. As usual, I raised questions and made suggestions on her first draft. I was pleased to see that her second draft reflected serious attention to my comments and substantial improvement in the final product. The analysis and writing showed the talent and effort that would be called on as a judicial clerk.

As I spent time with Clarissa in class and in discussing her paper in my office, I found her quite engaging. Her personal skills should also work well in a judge's chambers.

In short, I think that Clarissa Galaviz Lizarraga has the intellectual and personal qualities that would serve her very well as a judicial clerk. Please contact me at 312/503-8381 if there is any additional information about her that I could provide that would be helpful in your decision-making process.

Respectfully,

Leonard S. Rubinowitz
Professor of Law
Northwestern Pritzker School of Law

Leonard Rubinowitz - l-rubinowitz@law.northwestern.edu - (312) 503-8381

Clarissa Galaviz

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DAMIAN WATERS,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:21-CV-03412
)	
UNITED PARCEL SERVICE, INC.)	
)	
Defendant.)	

Decided Jan. 9, 2022

MEMORANDUM OPINION AND ORDER

INTRODUCTION

Plaintiff Damian Waters alleges that Defendant United Parcel Service, Inc. (“UPS” going forward) violated his civil rights under 42 U.S.C. § 1981 by terminating his employment due to race discrimination. Waters, an Illinois resident employed in Chicago, conducted feeder driver work assignments in Indiana, and during one assignment, an incident with a vehicle dolly took place. Waters notified his manager of the dolly incident, which led to an interaction that

Clarissa Galaviz

concluded with his termination of employment without warning. Waters attempted to obtain information about his dismissal but could not obtain an answer from his manager. Waters, who is African American, further claims that Caucasian feeder drivers had experienced similar problems with dollies, and the employer did not terminate those drivers.

UPS motions to dismiss or, in the alternative, to plead a more definite statement, Waters' claim because UPS states that Waters did not plead sufficient facts to support the alleged discrimination on his employment termination. Waters claimed that his plea was sufficient and could not be dismissed or pleaded in a more definite statement.

The Court agrees that Waters has not pleaded sufficient facts in his claim and motions to dismiss without prejudice, allowing Waters to amend his complaint within 21 days.

BACKGROUND

Damian Waters, an African American resident of Illinois, obtained employment as a feeder driver with UPS in March 2017 at the Jefferson Street location in Chicago. UPS has incorporation in Delaware, and its principal place of business is in Georgia. From the beginning of his employment through July 2019, Waters received favorable reviews from supervisors. Waters was subject to a Collective Bargaining Agreement ("CBA") between Teamsters Local 710 and UPS as part of his employment.

In July 2019, UPS dispatched Waters to take a load of packages to a UPS terminal in Plainfield, Indiana. Waters completed this task, and UPS subsequently asked to take additional packages to a terminal in Indianapolis. Before the trip, a dispatcher contacted Waters and told him to take a dolly with his vehicle to Indianapolis, which he attached to his vehicle. After

Clarissa Galaviz

driving for about a mile, he noticed the dolly acted erratically and became detached from the vehicle, resulting in minor damage to the truck's rear. Waters claims that he did not conduct any actions that contributed to the malfunction of the dolly during the attachment or driving.

Nevertheless, Waters called a Chicago dispatcher and his manager and notified them of the incident. The dispatcher requested Waters to drive back to the Plainfield terminal with the dolly attached, which he did. When he arrived at the terminal, he spoke with a Chicago manager on the phone, who requested photographs of the dolly. Waters complied with the request. Afterward, the manager notified him that he was taking him out of service.

An Indianapolis UPS driver picked up Waters and drove him back to Chicago. Upon his arrival, management asked Waters to prepare a statement, and he complied. However, UPS notified Waters of his employment termination after submitting the statement. Waters attempted to obtain an explanation regarding this decision and whether it was determined there was a malfunction with the dolly. Still, he was not able to receive a response from management. UPS, in addition, did not provide Waters with maintenance records related to the incident.

Waters filed a complaint against UPS in June 2021, alleging that UPS violated his civil rights under 42 U.S.C. § 1981. Waters asserts that UPS did not terminate Caucasian feeder drivers when they experienced problems like his. UPS responded and asked to dismiss the claim under Federal Rule of Civil Procedure 12(b)(6) or a motion for a more definite statement because Waters fails to allege essential elements of race discrimination with specificity. Specifically, UPS states that Waters fails to state facts that he met employment legitimate expectations or that UPS treated him less favorably than similarly situated individuals. Waters responded to UPS' motion, stating that his complaint is sufficient and should survive the motion to dismiss.

Clarissa Galaviz

LEGAL STANDARD

The Court, in this opinion, focuses solely on whether we should grant the motion to dismiss or the alternative motion for a more definite statement requested by Defendant. Federal Rule of Civil Procedure 12(b)(6) tests a complaint's legal sufficiency, not the merits of the allegations. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, n.14 (2007). The allegations, however, must possess sufficient facts to raise a plausible right to relief. *Id.* In addition, the Federal Rule of Civil Procedure 8 requires a complaint to assert factual allegations that raise a right to relief that is above a speculative level. *Arnett v. Webster*, 658 F.3d 742 (7th Cir. 2011).

When ruling on a motion to dismiss, the Court must draw reasonable inferences in favor of the non-moving party and accept all well-pleaded factual allegations as accurate. *Gruber v. Creditors' Prot. Serv., Inc.*, 742 F.3d 271, 274 (7th Cir. 2014). A plaintiff must do more than recite elements of a claim in the complaint; the "complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Zellner v. Herrick*, 639 F.3d 371, 378 (7th Cir. 2011) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). If the plaintiff pleads facts that allow the Court to draw a reasonable inference that the defendant is liable for the alleged misconduct, the claim is facially plausible. *Ashcroft v. Iqbal*, 129 S.Ct. at 1949.

In the alternative consideration, a motion for a more definite statement, Federal Rule of Civil Procedure 12(e), is under the discretion of the Court and will not be granted unless the defendant cannot reasonably expect to frame a responsive pleading. A motion for a more definite statement is proper when the movant demonstrates that additional information is needed to

Clarissa Galaviz

prepare a response. *Robinson v. Midlane Club*, No. 94 C 1459, 1994 U.S. Dist. LEXIS 14790, at *8-9 (N.D. Ill. Oct. 17, 1994).

Lastly, the Court must consider 42 U.S.C. § 1981, which specifies that in a claim for employment discrimination, a plaintiff only needs to allege (i) type of discrimination, (ii) person responsible for the discrimination, and (iii) when the discrimination took place. *Hickman v. Family Dollar, Inc.*, 2021 WL 4401498 at 4 (N.D.Ill. September 27, 2021).

DISCUSSION

First, the Court looks at the elements required to plead a § 1981 employment discrimination claim. The first element, the type of discrimination, is stated by Waters to be racial. As an African American, he is discriminated against and claims that Caucasian feeder drivers similarly situated were not terminated. The second one, identifying the individual responsible for the discrimination, is Defendant UPS, with specific management employees involved not identified individually. Finally, the third element can be identified when the discrimination occurred in July 2019. Therefore, the Court can state that Waters provides a sufficient discrimination claim based on these.

Next, the Court evaluates whether the complaint overall pleads sufficient facts to establish a prima facie race discrimination case. The Court examines the allegations of Damian Waters and treats them as true, drawing favorable inferences, following the ruling in *Gruber v. Creditors' Prot. Serv., Inc.*, 742 F.3d 271 (7th Cir. 2014). Here, Waters alleges that UPS terminated his employment without warning after being employed with them for over a year and having good reviews of his performance. Waters had an incident with a dolly on his vehicle

Clarissa Galaviz

during an assignment out of state. This incident led to minor damage to the vehicle he was driving. After reporting the incident, management asked Waters to return to the terminal where he obtained the dolly and asked for photographs of the dolly and vehicle, and he complied with these requests. A manager at the Chicago location told Waters he was now out of service. UPS sent another employee to pick up and drive Waters back to the Chicago office he was based at, and upon return, management requested him to provide a statement whose exact content the Court is not aware of. After submitting the statement, Waters was notified of employment termination by management. In addition, he requested information about the maintenance records and the decision of whether the dolly he used had a malfunction. UPS did not provide the requests, and Waters maintains he was not responsible for the malfunction of the dolly. He further claims that other similarly positioned employees at UPS, specifically Caucasian feeder drivers, who have experienced similar problems with dollies, were not terminated due to these problems.

While Waters provides plenty of facts regarding the incident and events that led to his termination, the Court does not find them sufficient to establish a prima facie case. The establishment of a prima facie case of race discrimination happens when a Plaintiff shows that: “(1) he is a member of a protected class, (2) he was meeting his employer’s legitimate expectations, (3) he suffered an adverse employment action, and (4) his employer treated similarly-situated employees outside his protected class more favorably[.]” *Haynes v. Autozone, Inc.*, No. 04 C 1435, 2004 U.S. Dist. LEXIS 26866, at *6-7 (N.D. Ill. Dec. 16, 2004) (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973); *Davis v. Con-Way Transp. Cent. Express, Inc.*, 368 F.3d 776, 784 (7th Cir. 2004)).

Clarissa Galaviz

The Court now walks through the elements above. First, Waters does provide that he is a member of a protected class in his claim of racial discrimination. The second element, requesting he met the employer's expectations, is not pleaded sufficiently. Waters fails to provide details supporting his meeting his employer's expectations. While he claims he was receiving positive feedback, he does not state when, how often, whether these were periodical documented evaluations, etc. Without the support of this kind, we cannot establish whether Waters was meeting UPS' employment expectations.

We continue our evaluation of the third and fourth factors. The third, the suffering of an adverse employment action, is satisfied, as Waters does specify that he was taken out of service and eventually terminated by his employer, UPS. The fourth factor that UPS treated similarly situated employees outside the protected class more favorably is not satisfied. While Waters claims that UPS did not terminate Caucasian feeder drivers who have found themselves in similar incidents, he fails to support this conclusory statement. Waters does not refer to witnessing these happenings and does not provide other documentation to help this statement.

Based on this evaluation, the Court finds that Waters' claim does not satisfy the necessary elements to establish a *prima facie* racial discrimination case because he only meets two necessary factors. Therefore, the Court finds it proper to dismiss the claim under Federal Rule of Civil Procedure 12(b)(6). The pleaded facts are insufficient to raise a right to relief above speculation.

Nonetheless, given the facts and the motion that UPS filed in response, the Court allows the dismissal to be without prejudice. Waters has 21 days to amend its complaint, as the facts provide gaps that neither party has addressed for a proper, complete evaluation of the issue.

Clarissa Galaviz

CONCLUSION

For the preceding reasons, we grant the defendant's motion to dismiss, without prejudice, for failure to state a claim. The plaintiff has the opportunity to amend the complaint within 21 days.

IT IS SO ORDERED.

Applicant Details

First Name **Jason**
 Middle Initial **W**
 Last Name **Gallant**
 Citizenship Status **U. S. Citizen**
 Email Address jgallant@utexas.edu
 Address

Address

Street
100 Maiden Lane #1516
 City
New York
 State/Territory
New York
 Zip
10038
 Country
United States

Contact Phone Number **2035365050**

Applicant Education

BA/BS From **Cornell University**
 Date of BA/BS **December 2017**
 JD/LLB From **The University of Texas School of Law**
<http://www.law.utexas.edu>
 Date of JD/LLB **May 22, 2021**
 Class Rank **School does not rank**
 Law Review/Journal **Yes**
 Journal(s) **Texas Law Review**
 Moot Court Experience **Yes**
 Moot Court Name(s) **Jessup International Moot Court Team**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	Yes
Post-graduate Judicial Law Clerk	No

Specialized Work Experience

Recommenders

Davidoff, Amanda
davidoffa@sullcrom.com
White, Thomas
whitet@sullcrom.com
212.558.3551
Dickerson, Mechele
mdickerson@law.utexas.edu
512-232-1311

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Jason Gallant

100 Maiden Lane #1516, New York, NY 10038 • (203) 536-5050 • jasongallant182@gmail.com

March 23, 2023

The Honorable Jamar K. Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am a second-year associate at Sullivan & Cromwell in New York pleased to apply for a clerkship position in your chambers beginning in August 2024. As an aspiring litigator, I am interested in clerking in your chambers to build off my substantive experiences both as an intern for Judge Fish of the Northern District of Texas, and as a student in the University of Texas Supreme Court Clinic. If fortunate enough to be selected, I would begin this clerkship with three years of work experience.

I am currently in my firm's litigation group handling a variety of cases in different fields, including securities, cryptocurrency, and complex commercial litigation. My first year of practice has provided me a wealth of experiences, including both federal and international trial work, substantive deposition witness preparation and drafting work, and assisting clients during the early stages of litigation. My most recent trial-related experience involved a five-week trip to the United Kingdom to prepare a client for trial. I took from these experiences valuable project management skills, clear and concise communication, and an endurance against difficult challenges, all of which will serve me well as a clerk in your chambers.

My application includes a resume, transcript, and writing sample. I include Amanda Flug Davidoff and Thomas White, Partners at Sullivan & Cromwell LLP, as well as Professor Mechele Dickerson of the University of Texas School of Law, as references. These recommenders may be reached as follows:

- Amanda Flug Davidoff, Partner, Sullivan & Cromwell LLP
davidoffa@sullcrom.com, (202) 956-7500
- Thomas White, Partner, Sullivan & Cromwell LLP
whitet@sullcrom.com, (202) 956-7500
- Professor Mechele Dickerson, Arthur L. Moller Chair in Bankruptcy Law and Practice
mdickerson@law.utexas.edu, (512) 232-1311

Respectfully,
Jason Gallant

JASON GALLANT

100 Maiden Lane #1516, New York, NY 10038 | (203) 536-5050 | jasangallant182@gmail.com

EDUCATION

The University of Texas School of Law

Austin, TX

J.D., with Honors

May 2021

- G.P.A.: 3.65
- Journal: *Texas Law Review*, Articles Editor, Volume 99
- Honors: Dean's Achievement Award – Outstanding Student in Legislation and Statutory Interpretation course
- Research Assistant: Professor Lawrence Sager, May 2020 – July 2020
- Clinic: Supreme Court Clinic, January 2020 – May 2020
- Activities: Jessup International Moot Court Competition Oral Advocate – South Regional Champion, New Orleans (March 2020); Jewish Legal Society, President

Cornell University

Ithaca, NY

B.A., Economics

December 2017

- G.P.A.: 3.42
- Activities: University Hearing and Review Board, Appointed Undergraduate; Academic Integrity Hearing Board, Elected Undergraduate; Cornell International Affairs Society, Model UN Delegate; *Red Solo A* Cappella, Treasurer
- Study Abroad: University of St. Andrews – St. Andrews, UK, September 2016 – May 2017

LEGAL EXPERIENCE

United States District Court – Middle District of Florida

Orlando, FL

Judicial Law Clerk to the Hon. Roy B. Dalton, Jr., U.S.D.J.

August 2023 – August 2024 (expected)

Sullivan & Cromwell LLP

New York, NY

Associate

September 2021 – Present

Summer Associate

May 2020 – August 2020

Represent foreign sovereigns, public and privately-held companies in contractual disputes, rescission offers; cryptocurrency exchanges in various litigation matters in United States District Court

- Draft briefs in support of and opposition to dispositive motions
- Prepare partners and witnesses for depositions; draft question outlines and prepare exhibit binders for depositions
- Manage pre-trial procedures before the Crown Commercial Court in the United Kingdom; draft cross-examination preparation outlines for appearing witnesses; coordinate and compile document binders for presiding judge; manage traveling witnesses' appearances in Court
- Draft written discovery requests, interrogatories and responses
- Review documents to be produced to opposing counsel to assess responsiveness to document requests and potential privilege issues; manage team of associates and analysts to respond to reviewers' questions about production-related issues
- *Pro Bono* practice includes representing asylum seekers from Afghanistan before USCIS interviewers; filing suit to enforce consent decrees in state-run prisons in Florida; representing teacher in employment mediation against former school district

United States District Court – Northern District of Texas

Dallas, TX

Judicial Intern to the Hon. A. Joe Fish, U.S.D.J.

May 2019 – July 2019

BAR ADMISSION

- New York

PUBLICATION

- *A Constitutional Framework for Enforcing Statewide Quarantine Orders: Banning Out-of-State Residents from In-Person Transactions*, 20 Conn. Pub. Int. L. J. 315 (2021)



THE UNIVERSITY OF TEXAS SCHOOL OF LAW

UNOFFICIAL TRANSCRIPT PRINTED BY STUDENT

JD

OFFICIAL NAME: GALLANT, JASON W.
PREFERRED NAME: Gallant, Jason W

ADMIT: 08-29-2018

TOTAL HOURS CREDIT: 86.00
CUMULATIVE GPA: 3.65

						HOURS ATTEMPT	HOURS PASSED	EXCLUDE P/F	SEM AVG
FAL 2018	427	TORTS	4.0	B+ TOM					
	521	CONTRACTS	5.0	B+ DSS					
	332R	LEGAL ANALYSIS AND COMM	3.0	B+ SJP	FAL 2018	16.00	16.00	16.00	3.40
	433	CIVIL PROCEDURE	4.0	A- AMD	SPR 2019	30.00	30.00	30.00	4.04
SPR 2019	431	PROPERTY	4.0	A SMJ	SUM 2019	33.00	33.00	30.00	0.00
	423	CRIMINAL LAW I	4.0	A JEL	FAL 2019	46.00	46.00	42.00	3.75
	232S	PERSUASIVE WRTG AND ADV	2.0	A- KSB	SPR 2020	60.00	60.00	42.00	0.00
	434	CONSTITUTIONAL LAW I	4.0	A+ R A	FAL 2020	74.00	74.00	52.00	3.58
SUM 2019	W397P	INTERNSHIP: JUDICIAL	P/F	3.0 CR MRC	SPR 2021	86.00	86.00	58.00	3.35
FAL 2019	397S	SMNR: COLLOQ CMLX LITI		3.0 A LAB					
	396K	LEGISLATION		3.0 A ADJ					
	386	FEDERAL COURTS		3.0 A- LW					
	385	PROFESSIONAL RESPONSIBI		3.0 B+ JSD					
	132D	ADV LGL WR: WORKSHOP	P/F	1.0 CR WCS					
SPR 2020	474K	BUSINESS ASSOCIATIONS	P/F	4.0 CR DSS					
	462L	REMEDIES	P/F	4.0 CR AMD					
	697C	CLINIC: SUPREME COURT	P/F	6.0 CR MFS					
FAL 2020	380D	SECURED CREDIT-WB		3.0 B+ JLW					
	483	EVIDENCE-WB		4.0 A- GBS					
	376M	ADVOCACY SURVEY-WB		3.0 A- MJG					
	176N	ADVOCACY SURVEY: SKILLS	P/F	1.0 CR DMG					
	376U	APPELLATE ADVOCACY-WB	P/F	3.0 CR RMR					
SPR 2021	346K	NEGOTIATION		3.0 A MSC					
	476W	ADVOC PRAC/THRY FOR NEW	P/F	4.0 CR TWM					
	279P	DEPOSITION/EXPERT WITNE	P/F	2.0 CR JMM					
	378R	CAPITAL PUNISHMENT-WB		3.0 B- JMS					

+ All Law School courses were graded on the pass/fail basis in Spring 2020 due to the COVID-19 public health crisis.

06-10-2021

EXPLANATION OF TRANSCRIPT CODES

GRADING SYSTEM

LETTER GRADE	GRADE POINTS
A+	4.3
A	4.0
A-	3.7
B+	3.3
B	3.0
B-	2.7
C+	2.3
C	2.0
D	1.7
F	1.3

Effective Fall 2003, the School of Law adopted new grading rules to include a required mean of 3.25-3.35 for all courses other than writing seminars.

Symbols:

Q	Dropped course officially without penalty.
CR	Credit
W	Withdrew officially from The University
X	Incomplete
I	Permanent Incomplete
#	Course taken on pass/fail basis
+	Course offered only on a pass/fail basis
*	First semester of a two semester course

A student must receive a final grade of at least a D to receive credit for the course. To graduate, a student must have a cumulative grade point average of at least 1.90.

COURSE NUMBERING SYSTEM

Courses are designated by three digit numbers. The key to the credit value of a course is the first digit.

101	-	199	One semester hour
201	-	299	Two semester hours
301	-	399	Three semester hours
401	-	499	Four semester hours
501	-	599	Five semester hours
601	-	699	Six semester hours

SCHOLASTIC PROBATION CODES

SP	=	Scholastic probation
CSP	=	Continued on scholastic probation
OSP	=	Off scholastic probation
DFP	=	Dropped for failure
RE	=	Reinstated
EX	=	Expelled

March 23, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

It is a pleasure to write in support Jason Gallant's application for a clerkship. Since joining Sullivan & Cromwell's New York office in September 2021, Jason has impressed with his enthusiasm, work ethic, and collegiality. While we would be sorry to see him leave, Jason will be an asset to any judicial chambers.

During his time at the firm, Jason has been an important member of a team handling two significant litigations for a sovereign client. One of these matters went to a five-week trial in London at the end of last year, during which Jason mastered a complex and enormous factual record and managed legal assistants and staff. The other is proceeding in the Southern District of New York, where Jason has done good legal research and assisted with fact and expert depositions.

As the partner in charge of associate staffing, I have insight into Jason's overall docket and level of commitment to the job. Thus far Jason has put in long hours and volunteered regularly for new matters. On top of all this, he's an absolute pleasure to work with.

In short, I heartily recommend Jason for a clerkship. Please feel free to call me at 202-956-7570 with any questions.

Sincerely,

Amanda F. Davidoff

Amanda Davidoff - davidoffa@sullcrom.com

SULLIVAN & CROMWELL LLP

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FACSIMILE: 1-202-956-7676
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*1700 New York Avenue, N.W.
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February 28, 2023

Dear Judge:

I am pleased to submit this letter of recommendation on behalf of Jason Gallant. I am a Partner in Sullivan & Cromwell's litigation group and have had the pleasure of working directly with Jason on complex litigation relating to GDP-linked securities that the Republic of Argentina issued in 2005. I would like to highlight three reasons why I believe Jason would be an excellent addition to your chambers.

First, during his time at Sullivan & Cromwell, Jason has gained valuable experience from a wide range of projects touching on the key milestones in a complex litigation. Jason has, for example, helped take and defend important depositions; drafted correspondence with opposing counsel; worked on motions for summary judgment (and related S.D.N.Y. Rule 56.1 statements); and assisted with preparing expert reports and depositions. Having seen a case from all of these angles will help Jason navigate the matters that come before your court.

Second, apart from the breadth of Jason's experience, I have worked with him directly and have been impressed with the quality of his work. The matter we are working on together involves securities that Argentina issued as part of its debt restructuring in 2005. The cases—which are pending before Hon. Loretta Preska in the Southern District of New York and before the High Court in London—require understanding the mechanics of complex financial instruments that tie payments to the performance of the Republic's real economy. In these cases, Jason has been the point person on many important research projects and was a valuable member of our trial team in London, where he (i) helped coordinate and prepare the “trial bundles” for each witness; (ii) created important factual chronologies that were incorporated into our written submissions; and (iii) managed the paralegal team, overseeing fundamental tasks such as the translation of exhibits.

Jason has strong research and writing skills, is organized, and has the attention to detail that we expect of our litigation associates.

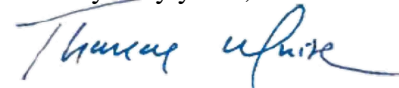
Third, and finally, Jason has many other qualities that will make him an

-2-

excellent law clerk. He has a great attitude; collaborates well with his peers and supervisors; and has shown excellent time management skills. He also has cheerfully volunteered to do assignments that required late-night or weekend work. I am confident he will do well working as part of the close-knit group supporting the Court.

Please contact me at 212-558-3551 if I can be of further assistance in evaluating Jason's clerkship application.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Thomas C. White", with a stylized, cursive script.

Thomas C. White

March 23, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

Jason Gallant has asked me to update a letter I wrote in June 2020 to support his recent clerkship applications. He was a student in my Federal Civil Procedure class in Fall 2018 and also in my Spring 2020 Remedies class and I think he would be a welcome addition to your chambers.

Jason was a first-year law student in my large Federal Civil Procedure class of almost one hundred students. Jason received the grade of "A-" on the final exam in that class. He was quite reserved and timid at the beginning of the term but grew in confidence as the semester progressed. Jason was always prepared when I called on him in class and was willing to tackle topics involving class or religion when I posed controversial questions to him. Jason was also in a small section of my Spring 2020 Remedies class. Because all classes were graded on a P/F basis in the 2020 Spring semester, I cannot report what grade he would have received. What I can tell you, though, is despite a university-wide required transition to online classes due to the coronavirus pandemic, Jason continued to consistently attend class despite his tremendous obligations on the Texas Law Review.

It was my understanding that Jason was interested in clerking because he had long-term aspirations to enter the field of white-collar criminal defense and governmental investigations. He used his time wisely in law school to prepare for that career, as he was active in oral advocacy through moot court competitions and also held a judicial internship. In addition to those more academic activities, Jason was also a singer who performed in a law school "a capella" group that performed at official law school events, like the new student orientation day, as well as in the law school's annual student musical skit.

I believe Jason Gallant will be a committed and hardworking judicial clerk and a welcome addition in any judicial chambers. I recommend him to you and would be happy to discuss him in more detail if you would like.

Respectfully,

A. Mechele Dickerson
Arthur L. Moller Chair in Bankruptcy Law and Practice
University Distinguished Teaching Professor
The University of Texas School of Law

Mechele Dickerson - mdickerson@law.utexas.edu - 512-232-1311

March 1, 2022

MEMORANDUM TO: Partner

FROM: Associate

RE: Research Questions Responses

This memorandum analyzes (i) whether any of Plaintiff's claims are time-barred, (ii) whether Plaintiff's complaint can withstand a motion for summary judgment, and (iii) whether Defendant can be held individually liable under any of Plaintiff's claims. On point (i), Plaintiff's claims are likely not time-barred, but the New York Education Law's notice of claim requirement will likely result in dismissal of her state claims against the Department of Education ("DOE"). On point (ii), it is likely that Plaintiff's complaints can withstand a motion for summary judgment. On point (iii), while Defendant cannot be held individually liable under Title VII of the Civil Rights Act, she can be held individually liable under the New York State Human Rights Law ("NYSHRL") and the New York City Human Rights Law ("NYCHRL").

I. Plaintiff's Claims are Likely Not Time-Barred

Defendants have argued that Plaintiff's claims are time-barred, both for failure to file within the 300-day statute of limitations for her claims, as well as for failure to file a notice of claim. Memorandum of Law in Support of Defendants' Motion to Dismiss 9, ECF No. 18. For the following reasons, some of these claims will succeed.

A. Plaintiff's Claims are Not Outside the 300-Day Statute of Limitations

Defendants argue that Plaintiff's unlawful termination claim under Title VII is time-barred because she is required to file an administrative charge with the EEOC or other administrative agency "within 300 days after the alleged unlawful employment practice occurred." Mem. of Law Supp. Defs.' Mot. Dismiss 9, ECF No. 18 (citing 42 U.S.C. 2000e-5(e)(1); 29 U.S.C. sec 62(d)).

When "a plaintiff's allegations of discrimination extend beyond the 300-day limitations period, the nature of the claim determines what consideration will be given to the earlier conduct." *Petrosino v. Bell Atlantic*, 385 F.3d 210, 220 (2d Cir. 2004). Claims of a hostile work environment necessarily involve a continued set of violations, and so the 300-day limitations does not begin to run until the last alleged act of hostility in the workplace. *Haghighat v. Reuters America, Inc.*, 120 Fed.Appx.859, 862 (2d Cir. 2005). Claims of wrongful termination necessarily involve a "discrete act" and are barred after 300 days following the actual termination. *Petrosino*, 385 F.3d at 220. While claims for discrete acts are barred more than 300 days after their occurrence, prior discrete acts by an employer may constitute "relevant 'background evidence in support of a timely claim.'" *Id.* (citing *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 113 (2002)).

Defendants are largely incorrect that Plaintiff's claims are time-barred under the statute of limitations. Plaintiff pleads claims of a hostile work environment, retaliation, and unlawful termination. Complaint 5, ECF No. 1.

Hostile work environment claims are considered ongoing acts, and in order to prevail against the statute of limitations using calculations most favorable to the defendants, Plaintiff need only allege one hostile act after October 30, 2019. She succeeds

by pleading, at a minimum, that Defendant instructed her to speak with an “American accent” sometime in 2020.

Unlawful termination claims must be filed within 300 days of the “discrete act” leading to termination. Defendants have confused Plaintiff’s hostile work environment claims with her unlawful discrimination claim: here, again, Plaintiff was terminated in 2020, and so her claim was well within the 300-day statute of limitations calculated most in the defendant’s favor. Even if defendants are correct in saying that Plaintiff cannot pursue an unlawful termination claim based on alleged acts of discrimination prior to 2019, since Plaintiff was actually terminated within the 300-day statute of limitations, Plaintiff can use these prior acts of discrimination as background evidence in support of her otherwise timely termination claim. *See Morgan*, 536 U.S. at 113.

Therefore, as none of the discrete acts alleged in Plaintiff’s complaint occurred more than 300 days prior to the filing of her complaint, nor did all of the acts committed leading to a hostile work environment occur more than 300 days prior, Plaintiff’s claims should not be time-barred.

B. Plaintiff’s Failure to Serve a Notice of Claim Will Likely Result in Dismissal of her State Claims Against the DOE

Defendants argue that Plaintiff’s NYSHRL and NYCHRL claims should be dismissed for the additional reason that Plaintiff failed to file a notice of claim within 90 days of the claims’ accrual, as required by New York Education Law § 3813. ECF No. 18 at 8. In her opposition to the motion to dismiss, Plaintiff correctly argues that the notice of claim requirement does not apply to school principals. *Santana v. Mount Vernon City Sch.*

Dist./Bd. of Educ., 2021 WL 4523770, at *14 (S.D.N.Y. Sept. 30, 2021) (“Principals are excluded from the statute.”); *Kuperman v. City of New York*, 2021 WL 4442855, at *5 (S.D.N.Y. Sept. 28, 2021) (“Section 3813(1) does not apply, however, to actions against school principals.”) Therefore, Plaintiff’s state claims against Defendant are not affected by the notice of claim requirement.

However, Plaintiff was required to file a notice of claim with respect to her state claims against the DOE. Her complaint does not allege that she did so, and she did not meet this requirement by filing an EEOC/SDHR complaint within the 90-day statutory period¹ because she did not serve a copy of the complaint on the DOE. *See Santana*, 2021 WL 4523770, at *14 (“[A]n EEOC charge may satisfy the requirements of section 3813 so long as the EEOC charge: (1) places the school district on notice of the precise claims alleged; and (2) is served on the party required by section 3813 within the statutory time period.”) (internal quotation marks omitted); *Modica v. New York City Dep’t of Educ.*, 2021 WL 3408587, at *4 (S.D.N.Y. Aug. 4, 2021) (“Although some courts have held that filing an EEOC or SDHR complaint may satisfy the notice of claim requirement, the plaintiff must still plausibly allege that the administrative complaint met § 3813’s requirements, including that the EEOC or SDHR complaint was timely served upon the correct entity.”); *cf. Kuperman*, 2021 WL 4442855, at *5.

Because Plaintiff did not file a notice of claim, the only way that she could avoid dismissal of her state claims against the DOE is by successfully requesting an extension of time to file pursuant to New York Education Law § 3813(2-a): “Upon

¹ Defendants concede that Plaintiff’s claims accrued on June 29, 2020 (ECF No. 18 at 8), and Plaintiff filed her EEOC/SDHR complaint on August 12, 2020. ECF No. 1 at 6.

application, the court, in its discretion, may extend the time to serve a notice of claim.” Courts have “substantial discretion” to consider a variety of factors when deciding notice of claim extension requests, including whether “defendants have had actual knowledge of the facts constituting plaintiffs' claims within three months of accrual of the claim, or a reasonable time thereafter, and there was no evidence of prejudice to defendant.” *Bloom v. New York City Bd. of Educ.*, 2004 WL 639613, at *6 (S.D.N.Y. Mar. 30, 2004).

However, courts routinely deny extension requests that are made past the one-year statute of limitations, in keeping with the second sentence of § 3813(2-a): “The extension shall not exceed the time limited for the commencement of an action by the claimant against any district or any such school.” See *Bernheim v. New York City Dep’t of Educ.*, 2020 WL 3865119, at *4 (S.D.N.Y. July 9, 2020) (“[A]ccording to the statute, a late notice of claim must be filed no later than one year after a cause of action accrues.”); *McDonough v. New York City Dep’t of Educ.*, 2018 WL 4636834, at *8 (S.D.N.Y. Sept. 27, 2018) (“The Court may not permit Plaintiff to file a late notice of claim in this case because the notice is a required condition of his claim that cannot be extended beyond the one year limitations period set forth in the statute.”); cf. *Caviezel v. Great Neck Pub. Sch.*, 739 F. Supp. 2d 273, 280 (E.D.N.Y. 2010), aff’d, 500 F. App’x 16 (2d Cir. 2012) (granting extension request when “plaintiffs' notice was filed only shortly after the notice period expired, and [] the District Defendants were aware of the operative facts underlying the plaintiffs' claim”).

Here, because (i) Plaintiff has little evidence that the DOE had actual knowledge of the facts giving rise to her claim within the 90-day statutory period, (ii) any request she now made for an extension would be well past the one-year statute of

limitations, and (iii) in her opposition to DOE’s motion to dismiss, she conceded that the notice of claim issue was fatal to her state claims against the DOE instead of requesting an extension, it is unlikely that her state claims against the DOE would survive the pending motion to dismiss, let alone summary judgment.

II. Plaintiff’s Claims Are Likely to Survive Summary Judgment on the Merits

As a preliminary matter, Plaintiff asserts claims under Title VII, the New York State Human Rights Law (“NYSHRL”) and the New York City Human Rights Law (“NYCHRL”). “[C]laims asserted under Title VII and the NYSHRL are analyzed pursuant to the same standard; therefore, analysis of identical claims brought by an individual under both of these laws can be performed in tandem.” *E.E.O.C. v. Bloomberg L.P.*, 967 F.Supp.2d 816, 832 (S.D.N.Y. 2013) (citing *Pucino v. Verizon Wireless Commc’ns, Inc.*, 618 F.3d 112, 117 n. 2 (2d Cir.2010)). Claims under the NYCHRL are subject to a different standard, see *infra*.

A. Plaintiff’s Title VII and NYSHRL Claims Would Likely Survive Summary Judgment

Title VII discrimination claims proceed under a burden-shifting standard. First, the plaintiff must present a *prima facie* discrimination case, satisfying a four-factor test: “(1) [the employee] belongs to a protected group; (2) [s]he was qualified for [her] position; (3) [her] employer took an adverse action against [her]; and (4) the adverse action occurred in circumstances giving rise to an inference of race discrimination.” *Kirkland v. Cablevision Sys.*, 760 F.3d 223, 225 (2d Cir. 2014). Once this happens, the burden shifts to the employer to give a legitimate, non-discriminatory reason for its actions. *Id.* Only